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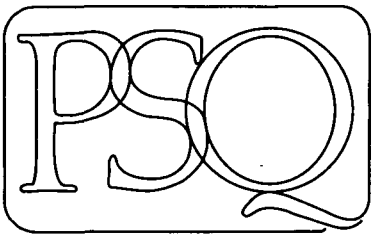

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POLITICAL SCIENCE QUARTERLY is a nonpartisan journal devoted to the study and analysis of government, politics, and international affairs.

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Issued in Spring, Summer, Fall, and Winter, POLITICAL SCIENCE QUARTERLY (ISSN 0032-3195, E-ISSN 1538-165X) is published by the Academy of Political Science, 475 Riverside Drive, Suite 1274, New York, NY 10115-1274; (212) 870-2500; fax: (212) 870-2202; aps@psqonline.org. Subscriptions are obtained through membership in the Academy.

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PUBLISHED INDICES: A title page and an index of articles and book reviews appears in the Winter issue of *PSQ*. *The Reader's Guide to Periodical Literature* lists articles from 1886 to 1953 and *The Social Science Index* has articles dating from 1953 to the present. Articles are also listed in *ABC Pol Sci*, *The International Bibliography of Political Science*, and the *Public Affairs Information Services Bulletin*. Articles are abstracted in *United States Political Science Documents*, *The International Political Science Abstracts*, *Historical Abstracts*, *Urban Affairs Abstracts*, *Political Science Abstracts*, *America: History and Life*, and *Lancaster Index*. Book reviews are listed in *The Book Review Digest to Social Science Periodicals*, *Book Review Index*, and *Book Review Digest*.

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Library of Congress Catalog Card Number: 7-36315.

Printed by Capital City Press, Montpelier, Vermont.

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From the Editor:

In this issue . . .

JOHN VAN OUDENAREN examines the trend toward the establishment of a bipolar relationship between the United States and its European allies, based on the consolidation of the European Union and the EU's increased responsibilities for foreign, security, economic and monetary policy. He challenges the view that a bipolar transatlantic relationship, even if conceived of as a "partnership," will be harmonious or will lead to a revitalization of the multilateralism that characterized the post-World War II period.

PAUL R. ABRAMSON, JOHN H. ALDRICH, AND DAVID W. ROHDE examine the election results, the appeals of the candidates, the exit poll conducted by Edison Media Research/Mitofsky International, and a series of polls conducted by Knowledge Networks over the course of the 2004 election year to evaluate the reasons that George W. Bush was reelected. They conclude that the vote decisions were based largely upon retrospective evaluations in which Bush was perceived by a narrow margin to have been a successful president as well as a leader who would be successful in combating terrorism. They argue that pundits may have exaggerated the role of social divisions in the election. Analyses of candidate appeals and of the concerns of the electorate show that the candidates made few appeals to values and that only a small proportion of the public said that social issues would be the most important factor in determining their vote.

DANIEL L. BYMAN addresses how changes in leadership in the Arab world will affect the region's politics and relationship to the United States. He pays particular attention to identifying which factors hinge upon individual leaders, which are related to particular regimes, and which are inherent to the interests of the state in question.

WILLIAM G. WEAVER and ROBERT M. PALLITTO examine the state secrets privilege, the most powerful tool of secrecy available to the president of the United States. They conclude that the privilege is increasingly subject to abuse and is wrongly used to protect the executive branch from embarrassment, to hide criminal activity, and to thwart legal requests for information.

SAMUEL ISSACHAROFF argues that the electoral college is a historic compromise that, despite its problematic origins, is not a significant departure from the weak majoritarianism in American constitutional politics. Indeed, the greatest distortion in American politics resulting from the electoral college arises from an excess of majoritarianism, the winner-take-all feature of awarding electoral votes in almost all states.

DEMETRIOS JAMES CARALEY

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Transatlantic Bipolarity and the End of Multilateralism

JOHN VAN OUDENAREN

More than two years after the bitter controversy over the U.S.-led invasion of Iraq, some of the rancor has gone out of the transatlantic debate over unilateralism. President George W. Bush has affirmed that working with other governments is his administration's "first choice" in foreign policy, while the European Union (EU) has made "effective multilateralism" the centerpiece of its new security strategy.[1] The United States in effect has bowed rhetorically to European concerns about go-it-alone policies emanating from Washington, while the EU has tacitly conceded the American complaint that much multilateralism *is* ineffective. Beyond the improved atmospherics, however, neither side has grappled with the structural roots of transatlantic differences over unilateralism. These roots are not—or at least not primarily—to be found in the contrast between a Europe that lives in a post-Hobbesian paradise in which multilateralism works and an America mired in a Hobbesian world that still requires unilateral action. Rather, they can be traced to the growing incompatibility between a multilateral system that was designed in the early postwar period and the political and economic realities of the 21st century.

Since the early 1950s, the United States and its European partners have been part of what might be called an Atlantic multilateral system, anchored in and in turn reinforced by an Atlantic community.[2] However, two long-term

[1] See Bush's Whitehall Palace speech in London, 19 November 2003; "Effective Multilateralism to Build a Better World: Joint Statement by President George W. Bush and Prime Minister Tony Blair," 20 November 2003; and European Council, *European Security Strategy: A Secure Europe in a Better World*, 12 December 2003.

[2] See Karl Deutsch, *Political Community and the North Atlantic Area* (Princeton, NJ: Princeton University Press, 1957), 9, 10, 117–161.

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trends increasingly are impinging upon this system. The first, within Europe, is the successful widening and deepening of the EU. The second, relating to the international system as a whole, is the globalization of international politics and economics associated with the end of the Cold War, the rise of Asia, and the emergence of new threats such as Islamic terrorism. As a consequence of these trends, the United States and its European partners find themselves in an awkward and, over the long term, probably untenable situation: clinging to the comfortable verities and institutions of Atlantic multilateralism, even as they are propelled into an emerging global system of the sort that the French have described as "multipolar." This article argues that in order to preserve transatlantic cooperation and to tackle such problems as terrorism, climate change, and global poverty, the two sides either are going to have to go *back* to more explicitly Atlantic-based cooperation or move *forward* to an entirely different system in which the transatlantic relationship is downgraded and embedded in a new global multilateralism. Either course is fraught with difficulty—the first because it implies a denial of deeply held ambitions for an integrated, EU-led Europe, the second because it means walking away from the legacy of transatlantic cooperation, with all the domestic and international political consequences that such a step would entail. Because neither course is likely, EU–U.S. relations are likely to decline further, *even if* Europe develops into the stronger pillar said by many to be a precondition for a renewed Atlantic partnership.

Varieties of Multilateral Experience

A standard analysis of recent U.S. policy runs somewhat along the following lines: after 1945, the United States took the lead in fashioning a new multilateral order that included the UN, the International Monetary Fund (IMF) and World Bank, the General Agreement on Tariffs and Trade (GATT), NATO, and, in a supporting role, the European Community (EC). The United States and Europe prospered and ultimately won the Cold War in and through this order. In recent years, however, Washington has turned its back on multilateralism, causing the EU to take up its cause. Washington needs to recommit itself to a multilateral order, working alongside and helping to promote a stronger EU, which logically must be its indispensable partner in building and preserving such an order.[3]

This argument, endlessly repeated by European officials and echoed by American academics, has at best a tenuous relationship to reality. In the decade after the end of World War II, the international community saw the development of three separate multilateralisms.[4] The first was what might be called a

[3] See, for example, Chris Patten's speech at Oxford, 13 February 2004; for a typical defense of partnership, see William Wallace, "Europe, the Necessary Partner," *Foreign Affairs* 80 (May–June 2001): 16–34.

[4] For a general discussion of postwar multilateralism, see John Gerard Ruggie, "Multilateralism: The Anatomy of an Institution" in John Gerard Ruggie, ed., *Multilateralism Matters* (New York: Columbia University Press, 1993), 3–48.

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global multilateralism, championed by the administration of Franklin D. Roosevelt, embodied in the UN and the Bretton Woods system, and based upon the universalist principles of collective security and economic nondiscrimination (universal application of the most favored nation [MFN] principle and currency convertibility).[5] The second was an *Atlantic* multilateralism. It took shape under the administration of Harry S Truman, after the universal institutions designed at the wartime conferences failed to meet the economic and security needs of postwar Europe. It was embodied in the Marshall Plan and its institutional offshoots (the Organization for European Economic Cooperation [OEEC] and the European Payments Union [EPU]) and in the North Atlantic Alliance. It was premised on the development of regional solutions to European problems, but very much under American tutelage and political leadership. Its underlying principles were Atlantic solidarity and the transatlantic sharing of costs and risks. The third multilateralism was specifically *European*, and began with Robert Schuman's proposal to establish the European Coal and Steel Community (ECSC) as an exclusively European counterpart to the global and Atlantic institutions already in existence. It was based on the principle of Community preference and the sharing of costs and benefits among European countries, outside structures dominated by the United States.

Each of these multilateralisms survives to the present, but their roles and relative importance have changed over time. European multilateralism has been a spectacular success, widening beyond its original six-nation core to include not only all those European countries that participated in the Marshall Plan and NATO but also, with the collapse of Communism, those that in the late 1940s fell within the Soviet sphere and thus beyond the reach of Atlantic and global multilateralism. Equally important, with the formation of a single market and the additions over time of a common currency, a fledgling security policy, and justice and home affairs policies, the EU has deepened and broadened its policy competences far beyond the scope of the original ECSC.

Global multilateralism also started to come into its own in the 1990s, fulfilling its collective security functions in the first Gulf War and playing an increasingly prominent role in addressing problems from currency crises to refugee flows to the AIDS pandemic. Global multilateralism has not yet lived up to the hopes that were placed in it in the mid-1940s, but the underlying structural impediment to its doing so—irreconcilable East–West ideological conflict—no longer exists.

Atlantic multilateralism, in contrast, has come under increasing pressure, as the political space in which it operates has been narrowed by the success of multilateralism at the European and, to a lesser extent, the global levels. As early as the late 1950s, the OEEC and EPU were phased out, as IMF-mandated currency convertibility was restored in Europe. Within a decade, the EC began its

[5] For universalism, see Richard N. Gardner, *Sterling-Dollar Diplomacy: Anglo-American Collaboration in the Reconstruction of Multilateral Trade* (Oxford: Clarendon, 1956), 6, 7, 12.

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own, separate path to monetary union. At least in the monetary sphere, much of the "action" was displaced from the Atlantic to the global and European levels. Atlantic multilateralism has fared better in the security sphere, where NATO retained a central role into the 1990s and beyond. But NATO also has been on the defensive since the end of the Cold War, on the one hand forced to define and redefine itself in reference to an EU determined to have a European and not just an Atlantic security identity, on the other bypassed by a United States that refuses to have its global military options subject to veto by old Europe.

Historically, global, Atlantic, and European multilateralism tended to reinforce one another. Trade liberalization in the EC complemented liberalization in the OEEC and the GATT and vice versa. The economic success of the EC contributed to the internal political stability from which NATO benefitted, while NATO provided the protective umbrella under which the EC could flourish. The EPU provided a bridge back to the dollar convertibility envisioned at Bretton Woods, and so forth. Nonetheless, there were from the beginning contradictions among these different levels of multilateralism that in some sense presaged the current crisis in the transatlantic order.

Four points about these different multilateral orders and the relationships among them are especially relevant to the course of U.S.–European relations. The first concerns the tendency, in retrospect puzzling to many historians, of U.S. policy makers to support a stronger European component of the international system even if it meant the relative weakening of multilateralism at the global and Atlantic levels. Establishment of the ECSC, for example, famously required a waiver from the GATT, under whose rules the Schuman Plan was technically illegal. Much to the chagrin of the British, Swedes, and others, the United States used its clout in the GATT to secure the waiver.[6] Subsequently, it backed the Six rather than the British when the latter proposed an OEEC-based European free-trade area as an alternative to the EC.[7] Historians also have wondered why Washington did not fight harder to prevent the evisceration of the MFN principle brought about by the Community's penchant for concluding preferential agreements of dubious legality under the GATT.[8] Secretary of State John Foster Dulles, in particular, always came down on the side of "little Europe," clearly for reasons having to do with ideology, teleology (a United States of Europe would replicate the U.S. experience and provide the surest bulwark against Communism), and the imperatives of defense.

Second, the United States consistently overestimated the degree to which the mechanisms that it had established at the global and Atlantic levels would

[6] William Diebold, *The Schuman Plan* (New York: Praeger, 1959), 523–532.

[7] On this point, see John Gillingham, *European Integration 1950–2003* (Cambridge, MA: Cambridge University Press), 49–52; 492–493. Formally, the United States was neutral on intra-OEEC deliberations, but it clearly leaned away from the British proposal. See Richard Mayne, *The Recovery of Europe* (New York: Harper & Row, 1970), 254.

[8] For an overall analysis of "organized discrimination" in transatlantic trade, see Otto Hieronymi, *Economic Discrimination against the United States in Western Europe (1945–1958): Dollar Shortage and the Rise of Regionalism* (Geneva: Droz, 1973).

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give it permanent levers of influence over European multilateralism. Lulled into a false sense of confidence by the ECSC-related application for the GATT waiver, in the fall of 1956, President Dwight D. Eisenhower's chief foreign economic policy adviser assured Dulles that the United States held "an indirect veto" over the establishment of the Common Market then being negotiated, "because the consent of the GATT will be required."[9] This assessment proved wildly off the mark, inasmuch as in the end, the Six rejected what they saw as a potential external veto over the integration project. As the administration's chief negotiator later concluded, "If the Six had to choose between renegotiating the treaty and being formally declared in violation of the GATT, they would undoubtedly have let the GATT go."[10] This problem was less apparent in the defense sphere, where, until the end of the Cold War, the West Germans, in particular, were careful not to challenge the primacy of Atlantic structures. Even with regard to defense, however, U.S. policy makers tended to overestimate how useful Atlantic structures could be in exerting U.S. influence on certain European policies. A case in point was the ill-fated multilateral nuclear force, through which the United States, following upon President John F. Kennedy's July 1962 "declaration of interdependence" speech, hoped to satisfy European demands for an autonomous nuclear role while retaining full control of the trigger.

A third point concerns the extreme reluctance of the EU and its member states to concede to third parties, and, above all, to the United States, anything like a "seat at the table" when it came to important decisions about the development of Europe. The first real U.S.–EC trade dispute, the so-called Chicken War of the early 1960s, arose as Community preference squeezed American poultry exports out of markets previously opened under other multilateral agreements. U.S. negotiators pointed to the provisions of the GATT requiring the establishment by mutual agreement of satisfactory compensation for increased levels of protection, arguing, as an American legal expert phrased it, that "whether and how the obligation is discharged is not for the union and its members to decide unilaterally; affected third countries also must be satisfied."[11] Brussels argued that the overall effect of the customs union was liberalizing and thus, by definition, GATT-compliant. Initially, this European reluctance to concede to the United States—bilaterally or through other multilateral mechanisms—anything like a veto over internal European decisions was most apparent with regard to trade policy and completion of the internal market. It later extended to more political issues, including enlargement and the development of a European security identity.

[9] Quoted in Youri Devuyst, "European Unity in Transatlantic Commercial Diplomacy" in Eric Philippart and Pascaline Winand, eds., *Ever Closer Partnership: Policy-Making in US–EU Relations* (New York: Peter Lang, 2001), 290.

[10] Isaiah Frank, *The European Common Market* (New York: Praeger, 1961), 162.

[11] Herman Walker, "Dispute Settlement: The Chicken War," *American Journal of International Law* 58 (July 1964): 671–685.

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Fourth, the interplay of these different multilateralisms affected the internal development of the EC/EU. The European legal order, famously characterized as *sui generis* by the European Court of Justice (ECJ), was shaped in part by a perceived need to ensure the autonomy of the Community vis-a-vis the member states, which entailed shielding European law and policy action from appeal to a "higher" multilateral order, e.g., the GATT and general international law. Thus, the ECJ elaborated the principle of direct effect of Community law in the member states but rejected the analogous argument that GATT law should be directly applicable within the Community.[12] For much the same federalizing reasons, the ECJ established the doctrine of the supremacy of Community over national law and, as a corollary, the requirement that member states abrogate or renegotiate treaties with third countries that conflicted with Community law.[13] On the institutional side, the existence of a hierarchy of multilateral orders accounts for much of the jockeying between the supranational institutions in Brussels and the member states which, notwithstanding the aspiration to create a united Europe, continued to exercise their sovereignty and to be represented in a variety of global and Atlantic multilateral organizations. The European Commission disliked those settings in which it had little role or representation, which it saw as rife with danger of U.S. (and other) divide-and-conquer tactics.[14] For their part, the member states were wary of perceived efforts by the Commission and the European Parliament to use the "single European voice" argument as a lever to bolster their authority over national governments and parliaments.

What Made Multilateralism Work (and What Has Changed)

For all these reasons, postwar multilateralism was a great deal messier and, in some senses, accidental than many retrospective accounts suggest. Far from emerging full-blown from the visionary minds of U.S. leaders in the 1940s, it represented a series of adjustments to strategic and tactical setbacks, and it was not without political conflict. The question is why, against this background, multilateralism worked so well.

[12] See the excellent analysis by Ronald A. Brand, "Direct Effect of International Economic Law in the United States and the European Union," *Northwestern Journal of International Law and Business* 17 (Winter/Spring 1996/97): 556–608. For an interesting recent development, see the May 2003 opinion of Advocate General Siegbert Alber, *Biret International SA and Etablissements Biret et Cie. SA v. Council of the European Union*, Cases C-93/02 and C-94/02, 15 May 2003, recognizing a claim for private party damages arising from the EU's failure to comply with a WTO judgement in the beef hormone case.

[13] *Commission v. Belgium*, C-170/98, ruling that Belgium's failure to denounce a bilateral maritime agreement with Zaire was a breach of Council Regulation 4055/86 relating to establishment of the single market in maritime services. See also *Commission v. Portugal*, C-62/98, and *Commission v. Portugal*, C-84/98, concerning Portugal's failure to denounce similar agreements with Yugoslavia and Angola. See also Pietro Manzini, "The Priority of Pre-Existing Treaties of EC Member States within the Framework of International Law," *European Journal of International Law* 12 (2001): 781–792.

[14] The Commission's role in wrecking the 1995 OECD multilateral investment negotiations, ostensibly in the name of increased representation for the developing world, but, in fact, because it much preferred to address this issue in the WTO, is the best example of this attitude at work.

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First, as is often pointed out, the external Soviet threat provided a kind of glue that helped to hold the transatlantic alliance together. It meant that the United States was prepared to tolerate, indeed in some respects even encouraged, a degree of European disregard for global and Atlantic multilateralism in the cause of building Europe, even as it discouraged the Europeans from taking unilateral action in the security sphere, where Atlanticism remained supreme.

Second, largely as a result of the sequential and cumulative way in which global, Atlantic, and European multilateralism developed, transatlantic and intra-European relations were based on a flexible and differentiated set of institutions with overlapping but not identical memberships. These institutions, for the most part, either stayed out of each other's way or reinforced each other even though, as has been noted, they had certain differences with regard to ultimate goals.

NATO was the primary security organization, with no direct connection to the EC. With its creation in 1949, the Western European Union (WEU) lost its main rationale, but it resurfaced at key points to play useful political roles.[15] The OEEC originally was established to administer Marshall Plan aid and played a key role in intra-European trade and payments liberalization in the 1950s. It later was transformed into the Organization for Economic Cooperation and Development (OECD) to facilitate the exchange of data and to serve as a venue for the negotiation of plurilateral agreements on such troublesome issues as export credits and energy stocks. Monetary issues were handled in the IMF, with special roles for groupings such as the G-10, Working Party Three of the OECD and, after 1975, the G-7.[16] With the EC limited both geographically and functionally, much policy coordination and consultation among European states took place in European bodies *other than* the Community. Thus, for example, citizenship and justice and home affairs issues were addressed in the Council of Europe, transport and energy issues in the OECD or de facto European subcommittees of the OECD (e.g., the European Conference of Transport Ministers), whereas some pan-European environmental issues were tackled in the UN Economic Commission for Europe and later the Conference on Security and Cooperation in Europe. Coordination with regard to still other issues, for example aviation safety and air traffic control, was accomplished in autonomous organizations such as the Joint Aviation Authority or Eurocontrol.

The open membership and the loose, intergovernmental nature of many of these bodies served to blunt both intra-European and transatlantic cleavages. Atlantic politics were in some respects analogous to today's intra-EU politics—characterized by issue-by-issue coalitions that did not always coincide with and

[15] For the WEU's role in the 1990s as a bridge between NATO and the EU, see Robert J. Art, "Why Western Europe Needs the United States and NATO," *Political Science Quarterly* 111 (Spring 1996): 1–39.

[16] For an insider account of how these institutions functioned, see Paul Volcker and Toyoo Gyohten, *Changing Fortunes: The World's Money and the Threat to American Leadership* (New York: Times Books, 1992), 18–47.

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thus reinforce each other to the point that they created permanent groupings of states who would predictably oppose each other on all issues. Thus, the United States and France would align with each other on "great power" issues (four-power rights in Berlin, the prerogatives of the UN Security Council, and some nuclear weapons issues), even though they disagreed on many other issues. Often, size and technical competence mattered more than location or political preference in establishing patterns of cooperation. Regulatory bodies in major European countries such as the UK, France, and Germany often had closer cooperation with their U.S. counterparts, both bilaterally and in UN specialized agencies, than with those in smaller European countries, from which they had less to learn and which they had less motivation to try to influence. In this sense, the transatlantic order was characterized by self-correcting and negative rather than self-reinforcing and positive feedback loops.[17] The parallel is not exact, in that much of the correcting had to occur on the European side. The United States remained a unitary actor, and an American president had the option, in the final analysis, of linking issue areas as Eisenhower did, for example, in blocking IMF credits during the Suez Crisis. This was unusual, however. Pluralism in Europe tended to be mirrored by an internal pluralism on the American side, as bureaucracies responsible for different issue areas took divergent positions on issues of interest to Europe.[18]

Third, postwar multilateralism was characterized by a certain specialization of roles among states. The limited competence of the EC and the exigencies of World War II and the immediate postwar period meant that individual European countries often had closer bilateral relations with the United States than with each other. This was especially true of the special relationship between the United States and Britain, but it extended to other countries as well.[19] Specialization, in turn, implied a degree of hierarchy that, while it could give rise to friction, was also a source of order. The United States clearly was first among

[17] Karl W. Deutsch and J. David Singer, "Multipolar Power Systems and International Stability," *World Politics* 16 (April 1964): 393. "The pluralistic model asserts that the amplifying feedback tendency is strengthened, and the negative feedback tendency is weakened, to the extent that conflict positions are superimposed or reinforcing. Thus, if all clashes and incompatibilities in the system produce the same divisions and coalitions—if all members in class Blue line up *with* one another and *against* all or most of those in class Red—the line of cleavage will be wide and deep, with positive feedback operating both within and between the two classes or clusters."

[18] For the sharp disagreements in the Nixon administration between the State Department and the National Security Council, on the one hand, and the economic agencies (the Departments of Agriculture, Commerce, and Treasury), on the other, about the discriminatory aspects of the first enlargement and implications for U.S. interests, see Henry Kissinger, *White House Years* (Boston, MA: Little, Brown, 1979), 425–429. In the Reagan administration, Alexander Haig resigned from the State Department in reaction to the Pentagon-inspired pipeline embargo of the early 1980s, reflecting the long-standing tendency, underpinned by internal bureaucratic arrangements that mirrored the external compartmentalization of U.S.–European relations, to separate economic from security issues.

[19] For specialization as a stabilizing factor and the "system of intermediary bodies" that contributed to peace in nineteenth-century Europe, see Paul W. Schroeder, "The 19th-Century International System: Changes in Structure," *World Politics* 39 (October 1986): 17–25.

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equals. Britain, France, and West Germany also played special roles on important issues (e.g., Berlin), whereas smaller countries, such as the Netherlands, often exercised influence far out of proportion to their size. Some Europeans complained about the "exorbitant privileges" that the United States gained from its special place in the international system, whereas Americans worried about the unequal burdens they had assumed. For the most part, however, a balance was maintained in which the United States bore relatively greater costs but, in exchange, could count on European support against the Soviet Union and in the maintenance of the international economic system.

These elements that helped to underpin the postwar multilateral order now either have disappeared or have been substantially weakened. The unifying effect of the Soviet threat is, of course, gone. One effect of this change has been to eliminate, in the security sphere, the inhibitions to subordinating Atlantic to European multilateralism that gave way, in the economic sphere, as far back as the 1950s. The EU and its member states continue to waffle somewhat on the precise nature of the relationship between the Union and NATO, but their insistence on preserving "full respect for the autonomy of EU decision-making"[20] is the security equivalent of the no-seat-at-the-table imperative that, in the economic sphere, goes back to the GATT review of the Treaty of Rome.

In addition, the dramatic development of the EU since 1991 has had the effect of marginalizing many of those non-EU institutions that played such key supporting roles in postwar multilateralism. With successive enlargements and the expansion of EU competences in the treaty revisions of 1986, 1992, 1997, and 2000, using the OECD or other non-EU bodies to address environmental, transport, or nuclear safety issues no longer made much sense. These issues are now predominantly dealt with in the EU context. The conclusion of the Schengen Agreements and the establishment at Maastricht of an EU third pillar began a major shift of citizenship and related issues from the Council of Europe to the Union, a trend that will reach its culmination with the entering into effect of the European Constitution (assuming it is ratified by the member states) and the resulting "justiciability" in the ECJ of issues formerly handled in the (non-EU) European Court of Human Rights. Most of these shifts are only important for Europe's internal development, but some bear on transatlantic relations and the international system as a whole. Examples of the latter include the emergence of EU-based regulatory bodies to deal with such issues as the safety of medicines and food, the gradual bringing of the (non-EU) European Space Agency under the purview of the EU, and the establishment of an EU armaments cooperation body to supersede older bodies that operated within NATO,

[20] See Paul Cornish and Geoffrey Edwards, "Beyond the EU/NATO Dichotomy: The Beginnings of a European Strategic Culture," *International Affairs* 77 (July 2001): 587–604 for a discussion; the quotation is from the 19–20 June 2000 Santa Maria da Feira European Council Presidency Conclusions, 590.

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the WEU, or on an ad hoc basis.[21] In general, bringing issues within the purview of the EU means a relative shift in power from national ministries to the Brussels-based institutions and a tendency to view such issues through the prism of the EU's overall competitive position with the rest of the world, the United States in particular. This is a subtle but important shift from the national best practice mentality that prevails, for example, in the OECD.

Enlargement also has meant that few, if any, European countries still pursue truly autonomous policies in those multilateral bodies in which the EU chooses to articulate a single position. In the trade area, countries such as Hungary (formerly a member of the Cairns group of non-U.S. agricultural exporters) or Sweden, who as recently as the Uruguay Round helped to mediate compromises or otherwise facilitate agreement between the EU and the United States, no longer play this role.[22] In nontrade areas, it still is possible for an EU member state to take an independent stance on a multilateral issue (as Finland, for example, did in rejecting the 1997 Ottawa land mine treaty), but such instances are becoming increasingly rare, as members and candidate countries alike come under intense pressure to follow a general EU line on what constitutes the correct multilateral position on any given question.

Finally, the informal hierarchy of powers that characterized the postwar multilateral order has been replaced by a transatlantic order that increasingly is thought of in bipolar terms, with the United States and the EU as a whole roughly equal in terms of gross domestic product and potential economic and political power. This has been accompanied by an erosion in the special bilateral relationships that helped to underpin the postwar multilateral order. Intra-European integration has outpaced transatlantic integration, leaving very few areas in which ties between the United States and individual European countries remain privileged over intra-European ties. Equally important, special relationships with the United States are frowned upon in Europe as subservience and a betrayal of the European cause, as is apparent in the difficulties that José Maria Aznar and Tony Blair have had because of their close ties with George W. Bush.

A vastly greater role for the EU in representing Europe externally and a decline of all institutions not linked to the EU, the virtual disappearance of European voices in the international community that do not speak on behalf of or at least in reference to a common EU position, and the discrediting of special bilateral relationships all point to an increasing "bipolarization" of the transatlantic order.[23] This long has been the case in the trade area, where, by virtue

[21] See European Commission, *Green Paper on European Space Policy*, 2003; and Stefano Silvestri, Rapporteur, *Space and Security Policy in Europe*, EU Institute for Security Studies Occasional Paper, No. 48 (December 2003). On the European Armaments and Research Capabilities Agency, see draft Treaty Establishing a Constitution for Europe, Articles I-40(3) and III-212.

[22] For the role of Hungary in the Cairns group and of Sweden, Finland, and Austria in the Australian-led De La Paix group, see Hugo Paemen and Alexandra Bensch, *From the GATT to the WTO: The European Community in the Uruguay Round* (Leuven: University of Leuven Press, 1995), 98–100.

[23] For an early (but positive) recognition of bipolarity, see Andrew Moravcsik, "The World is Bipolar After All," *Newsweek International*, 5 May 2003, 26.

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of the customs union and the common external tariff, the EU confronts the world as a unitary actor. It is likely to become the pattern in other spheres as well. The United States continues to warn against the emergence of an EU caucus within NATO, but it is logically difficult to reconcile a robust European Security and Defense Policy (ESDP), which Washington purports to welcome, with the absence of at least an informal EU group in NATO. In much the same way, the birth of the euro and the Union's increasing role in issues such as development policy are pushing in the direction of a "single European voice" in the IMF, World Bank, and other international economic institutions.

EU–U.S. Partnership: Good for Multilateralism?

For many analysts, a more bipolar transatlantic order, to the extent that it comes about through consolidation on the European side, is to be welcomed as a contribution to a stronger and more balanced transatlantic relationship, which in turn can be the foundation of a better-functioning global multilateral order. This view is particularly strong in Europe, where policy has long focused on establishing a European pillar able to function alongside the United States. Precisely how a European pillar will contribute to transatlantic and global order is not always spelled out, but two explanations dominate the discussion. One focuses on the EU as a counterweight that, in effect, will compel the United States to act multilaterally against what are presumed to be its natural inclinations. The other focuses on the EU as partner, arguing that if the United States is to act multilaterally, it needs someone to act *with*, and that this can only be a more capable EU.

Although these assumptions have become the stock-in-trade of speeches and communiqués, there is, in fact, little evidence that a more bipolar transatlantic relationship would be more harmonious or more multilateral. Indeed, the opposite is likely to be the case. Such a relationship, even if conceived of as a partnership, may well contribute to worsened relations and a more fractious international system. Some evidence for this can be seen in the experience of the World Trade Organization (WTO), which is the most "bipolar" of the settings in which the United States and Europe interact but also among the most contentious.[24] A long list of arguments can be adduced for why a more bipolar EU–U.S. relationship is likely to undermine rather than bolster multilateralism. Some of these relate to factors internal to the EU, while others are more structural and are based on how behavior in a system of two large actors differs from that in a system characterized, as was the case in the Cold War, by one dominant power, several medium powers, and a large number of smaller countries.

First, a bipolar transatlantic order is one in which political conflict is likely to escalate and spread from one part of the system to another rather than being

[24] For the EU and the United States as "hyperactive" users of the dispute settlement mechanism, see Patrick A. Messerlin, *Measuring the Costs of Protection in Europe: European Commercial Policy in the 2000s* (Washington, DC: Institute for International Economics, 2001), 239–242.

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compartmented and defused, as was often the case in the Cold War. As the EU develops more unified policies, what once would have been isolated bilateral disputes become by definition disputes between the United States and Europe. This long has been the case with regard to trade. By pursuing a single trade policy, EU countries gain increased leverage in the international system but they also become parties, in effect, to any dispute between a member state and a third country. This increasingly will become the pattern in political relations as well. In 2003, President Jacques Chirac failed in his bid to turn what began as a Franco–U.S. and German–U.S. disagreement into a generalized EU–U.S. confrontation. The March 2004 elections in Spain suggest that such a failure may be less likely in the future and that disputes over foreign policy will be generalized throughout the Union and increasingly translated into policy through the mechanisms of the Common Foreign and Security Policy (CFSP). Unity on the EU side inevitably will call forth a more unified U.S. response, and an end to the previous patterns in which certain agencies could be expected to be more "European" in their outlook. To use the pluralism model, feedback will become positive and self-reinforcing rather than negative and self-correcting.

Second, transatlantic differences will become more ideological and more values-based, hence more difficult to solve. Even more than is the case in relatively homogeneous national settings, European political and opinion leaders perceive a need to construct a European identity to underpin common policies. This is likely to lead to conscious or unconscious exaggeration of practical and philosophical differences with the United States, which, in turn, will result in still greater policy divergence, and so on, in an accelerating spiral. In some countries, on some issues, the transatlantic opinion gap has been wider than the divide over policy. This was so in the run-up to the war in Iraq, when leaders such as Aznar, largely for personal or intra-EU political reasons, took positions out of line with what was clearly a genuine, Europe-wide aversion to war. On other, more mundane issues, however, efforts by governments to generate support for common European policies are likely to contribute to a public opinion that is more critical of the United States than it would be in the absence of the quest for common policies. The idea that a common European identity can be forged out of opposition to the United States was fundamental to the Habermas–Derrida appeal of 2003, and is one that pervades a good deal of official thinking.[25] Eventually, efforts to define a European identity in opposition to the United States will provoke a countervailing anti-European sentiment in the United States, as seems to have happened to a degree already.

Third, even leaving aside questions of ideology and identity, political disputes will be more difficult to resolve in a bipolar order. During the Cold War, the United States had a strong interest in preserving the alliance system in which

[25] The appeal appeared in the *Frankfurter Allgemeine Zeitung* and *Liberation* on 31 May 2003; for a full English text, see J. Habermas and J. Derrida, "February 15, or What Binds Europeans Together: A Plea for a Common Foreign Policy, Beginning in the Core of Europe," *Constellations* 10 (September 2003): 291–297.

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it occupied a hegemonic position. Although this was not always obvious to those on the receiving end of U.S. pressure, Washington had reasons to moderate its positions on arms control, economic warfare, trade, and other issues.[26] This will be less the case in a bipolar system in which the United States may be subject to more countervailing pressure from the EU but in which it also will have a smaller stake in compromise. On the European side, there is also likely to be less willingness to back down in highly visible disputes, given the sense that Europe's power relative to the United States should be increasing and the probable reluctance of European leaders to yield to U.S. pressure in a way that could risk hard-won internal unity. "Diffuse reciprocity" will be harder to achieve in such an environment—a circumstance that may help to explain the already seemingly zero sum character of many U.S.–EU disputes.

Fourth, a more bipolar U.S.–EU relationship will result in transatlantic conflict spilling over into other regions, with deleterious effects for international order in general. In cases in which the United States and the EU are deadlocked over a particular policy issue, one or both sides may be tempted, especially given the declining propensity to compromise, to appeal to other international actors in an effort to break the deadlock on favorable terms. This already seems to be an emerging pattern, as can be seen in disputes over Kyoto, genetically modified organisms (GMOs), and the International Criminal Court (ICC). Once Washington and Brussels became deadlocked over Kyoto, Russia became by default the deciding voice in whether the treaty would go into effect. The U.S.–EU battle over the acceptability of genetically modified foods is being waged in famine-stricken Africa, where some countries are feeding their populations with genetically modified crops supplied by the United States while others have declined to accept U.S. aid out of fear of running afoul of European rules against GMOs. With regard to the ICC, developing and transition countries have been caught between the U.S. insistence that its troops be exempted from the jurisdiction of the court through the conclusion of bilateral agreements with these countries and the EU-led campaign to uphold the autonomy of the Rome Statute. In the run-up to the Iraq war, the two core states of the Union, France and Germany, were pitted against the United States and Britain in a scramble to line up the votes of the non-permanent members of the UN Security Council. As these cases indicate, the United States and the EU increasingly battle out their bilateral differences in third countries, a circumstance that casts doubt on the frequently heard argument that the need to tackle the problems of the unstable South can serve as the basis for a revitalized transatlantic partnership.

Fifth, the internal configuration of the EU is very poorly adapted to its playing a leading role in a multilateral order. Many scholars have speculated about

[26] For European influence on U.S. policy, see Thomas Risse-Kappen, *Cooperation among Democracies: The European Influence on U.S. Foreign Policy* (Princeton, NJ: Princeton University Press, 1995), esp. 194–226.

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the relationship between domestic political order and the capacity for external multilateralism. John Ruggie concludes that postwar multilateralism grew out of certain features of the American domestic polity.[27] John Ikenberry argues that democracies in general are better than nondemocratic governments at creating constitutional orders based on the kind of self-restraint that allowed postwar multilateralism to flourish.[28] Others are more skeptical of this line of argument and point to many features of the American political system that are as likely to contribute to unilateral as to multilateral approaches to policy.[29] Whatever one concludes about the American system, it is difficult to argue that the EU is suited to play a role as a co-pillar of multilateral order.[30] The basic problem is the complex and unstable relationship between the Union and its member states and the externalities that this imposes on the rest of the international system. Transforming Europe into a pole, pillar, or partner requires a degree of centralization. Such centralization can be achieved through supranational or intergovernmental means or some combination of the two. When the EU centralizes, however, it does not do so in the way, for example, that U.S. states do so by default when they leave the negotiation of international agreements to the federal government. Rather, it devises hybrid structures in which the Council (i.e., the member states) retains ultimate authority over negotiating mandates and the conclusion of agreements, the Commission conducts the negotiations, and implementation goes back to the member states, both collectively (acting through the "comitology" system of Council committees) and through their national executive powers.

The entire process—both establishing means to take EU-level decisions and then actually taking and implementing those decisions—is highly fragmented and politicized. Member states least enthusiastic about the transfer of powers to Brussels hold back as much decision-making authority as possible, both legally and by ensuring that any resulting EU-level structures are weak and by insisting that the member states retain their national seats in international bodies. The Commission, backed by sympathetic member states and the European Parliament, rarely if ever accepts any distribution of power as final and views each substantive issue, at least in part, through the prism of how the playing out of the issue will increase or diminish the power of the Commission. Delegation of regulatory functions to judicial or technocratic bodies remains extraordinarily difficult, as can be seen in the controversial decision to have risk *analy-*

[27] Ruggie, ed., *Multilateralism Matters.* See the various contributions, especially those of Ruggie, Anne-Marie Burley, and Peter F. Cowhey, 3–48, 125–156, 157–200.

[28] G. John Ikenberry, *Institutions, Strategic Restraint, and the Rebuilding of Order After Major Wars* (Princeton, NJ: Princeton University Press, 2001), esp. 29–49 on constitutional order.

[29] Separation of powers, the dispersion of responsibilities among different levels of government, and the ready access of special interests to power would come to mind.

[30] For a self-critical European view, see European Commission, *European Governance: A White Paper*, COM (2001) 428, 25 July 2001; and White Paper on Governance, Working Group No. 5, *Strengthening Europe's Contribution to World Governance*, R. Madelin, Pilot, Brussels, May 2001.

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sis performed by bodies such as the European Food Agency but to keep risk *management* firmly in political hands, i.e., with the member states acting in the Council of Ministers. Efforts to tackle the "democratic deficit" by increasing the powers of the European Parliament or by "politicizing" the Commission will only aggravate these problems.[31] The net result of these developments will be, as is their intent, a more powerful European voice in international regulatory affairs (defined as better able to block the United States), but also a more fractious environment, more politicization of technical issues, greater spillover of conflict from one organization or issue area to another, and structural polarization along transatlantic lines that in some respects is replacing the North–South divide of the 1970s as the dominant cleavage in international bodies.[32]

Sixth, a bipolar EU–U.S. order will marginalize non-U.S., non-EU countries in the Atlantic area, further diminishing their already limited contributions to global order. This issue has limited relevance for Europe itself, where it affects mainly Norway and Switzerland. It could be relevant for Turkey if admission to the EU is delayed for long or permanently derailed. Canada is even more affected. It was a major contributor to and beneficiary of Atlantic multilateralism, building upon its important role in World War II and its special relationships with Britain and the United States to become a major player in NATO and the OECD and eventually the G-7, and, for a time, benefitting from the loose and relatively open character of much European cooperation.[33] Although much of the decline in Canada's international influence can be attributed to its own policy failures, some of it is due to the disappearance of its traditional Atlantic space as transatlantic politics increasingly coalesce into a bipolar system of EU–U.S. cooperation and competition.[34] Canadians complain, for example, that the emergence of an EU caucus in the Western European and Others Group (WEOG) of the UN has tended to marginalize the role of a grouping that Canada regarded as one of its most important venues for influence, for example on nonproliferation policy.[35] These trends are noteworthy not just because Canada and Turkey are important middle powers whose margin-

[31] Giandomenico Majone, "The Credibility Crisis of Community Regulation," *Journal of Common Market Studies* 38 (June 2000): 273–302.

[32] See the controversies within ICAO over aircraft noise, in "Admissibility of U.S.–EU 'Hushkits' Dispute Before ICAO," *American Journal of International Law* 95 (April 2001): 410–412; for spillover regarding the "precautionary principle" from the WTO to the Convention on Biological Diversity, see Robert Paarlberg, "The Global Food Fight," *Foreign Affairs* 79 (May–June 2000): 24–38. Also noteworthy is the creeping politicization of the Codex Alimentarius Commission, the UN body that helps to set world food safety standards.

[33] For example, Canada became a de facto member of the European Space Agency at a time when opportunities for cooperation with NASA were limited.

[34] For a more detailed discussion, see John Van Oudenaren, "The Missing Atlantic Dimension" in Graham Walker, ed., *Independence in an Age of Empire: Assessing Unilateralism and Multilateralism* (Halifax: Dalhousie University Press, 2004), 90–98.

[35] The author is grateful for this point to Professor John Simpson, Mountbatten Centre for International Studies, University of Southampton.

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alization is a loss for transatlantic order, but because they are emblematic of the general inflexibility that will characterize a bipolar U.S.–EU order and that is likely to foreclose otherwise desirable diplomatic and institutional options.

Finally, a bipolar U.S.–EU order will result in constant tension over issues of representation and leadership in the international system, further degrading the effectiveness of international multilateral institutions. The EU and its member states are heavily overrepresented in most multilateral forums—relative to the United States, as measured against objective economic and demographic indicators, and relative to the developing countries whose causes European diplomacy often purports to champion.[36] Whether this overrepresentation becomes a matter of contention with the United States depends upon circumstances. Generally it has not, inasmuch as Washington has tended to welcome an active international role for the small and medium powers of Europe and has viewed such Eurocentric arrangements as the mixed constituencies in the IMF and World Bank as an example of a cross-cutting, negative feedback mechanism that has positive effects on transatlantic cooperation and the broader international system.

As part of the drive to create a stronger European pole, however, the Commission and some member states have pressed for institutional and legal reforms to ensure that Europe speaks with a single voice.[37] A situation in which the EU confronted the United States as a bloc but continued to wield votes far in excess of what it would have were it a single state would be certain to lead to clashes with Washington over a range of issues. This is already the case, for example, in international standards-setting bodies, where U.S. commercial interests accuse the Europeans of using their combined voting power "to effectively impose their preferences on the rest of the world."[38] At the same time, however, any hint of U.S. opposition to a stronger European voice will run headlong into the growing sentiment in Europe that the EU's weight in the international system should be increased rather than cut back as a consequence of the integration process. Indications of this political and psychological divide already can be seen in the increasingly common (and bitter) disputes over the selection of the heads of international organizations and in the sharp disagreements between the sides over procedural issues relating to recent multilateral treaties.

Two main counterarguments can be made to the claim that a more bipolar transatlantic order will have negative consequences for the future of U.S.–Euro-

[36] For the IMF, see Leo Van Houten, *Governance of the IMF: Decision Making, Institutional Oversight, Transparency, and Accountability*, IMF Pamphlet No. 53 (Washington, DC: International Monetary Fund, 2002).

[37] For this position, see Fraser Cameron, "After Iraq: The EU and Global Governance," *Global Governance* 10 (2002): 157–163.

[38] Jan Martin Witte, *A "Single European Voice" in International Standardization? American Perceptions, European Realities*, American Institute for Contemporary German Studies Working Paper Series, No. 2 (Washington, DC: American Institute for Contemporary German Studies, 2004.)

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pean relations.[39] The first questions the very premise of bipolarity and the emergence of a true pole on the European side. The proposed European Constitution may never be ratified. As the war in Iraq made clear, the member states are deeply divided over the Union's external role and its attitudes toward the United States. Enlargement to twenty-five member states increased the complexity and potentially undermined the decision-making capacity of the EU in a way that calls into question its ability to function as a unified actor on the international stage, especially in opposition to the United States. The Commission and the European Parliament press the "single European voice" argument, but the member states have shown themselves far from ready to give up their permanent seats in the UN Security Council or their prominent national roles in the Bretton Woods institutions. In sum, the very complexity in how the EU and its member states interact with the outside world—the fragmentation, politicization, and jockeying for advantage among and between the member states and the Brussels institutions—suggests an alternative view of the EU as an international actor: as less an economic and political union with flawed decision-making procedures than a collection of still-sovereign states that, while it has achieved a certain level of policy coordination and institutional development, hardly qualifies as a pole in the international system.

Although there is some truth in this counterargument, it does not invalidate the thesis of emerging bipolarity. There is a big difference between deliberately eschewing the creation of a European pole on the grounds that it is *in principle* incompatible with the preferred alternative of an Atlantic community (very much the position of the European Atlanticists of the 1950s and 1960s) and proclaiming, as virtually all European leaders now do, the need to create a stronger and more unified Europe but then failing to do so because of internal squabbling, personality conflicts among leaders, defective institutions, mishandled enlargement, or, worst of all, real or perceived exploitation of Europe's divisions by the United States. Although the EU may yet fail to transform itself into the powerful international actor dreamed of in Brussels and Paris, even a failed attempt to do so will have many of the same effects for transatlantic relations as would success as defined in European federalist terms. Indeed, a failed or at best partially successful European attempt to turn the EU into a more unified and powerful international actor could result in the worst of both worlds for Washington: heightened challenges in the trade, commercial, technology, regulatory and other areas in which the EU can act in a reasonably unified way, coupled with increased anger and resentment in at least some quarters at a United States seen as purposely blocking the emergence of a stronger Europe.

The second counterargument accepts the premise of emerging bipolarity, but questions whether it in fact would have such negative implications for transatlantic relations or multilateralism in general. The problems associated with a bipolar order, proponents of this view would argue, can be solved. The EU can

[39] The author is grateful to an anonymous reviewer for clarifying these arguments.

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be made to work more efficiently, with fewer negative spillover effects on the international bodies in which it operates. Brussels and Washington can learn or relearn the art of compromise. With the right leadership, new threats such as terrorism and global warming can become the basis for joint action rather than arenas of contention. A role can be found for Canada, international institutions can be reformed to reflect the relative weight of Europe in the international system, and so forth.

Proponents of this view would argue that a bipolar order is less a matter of policy choice than a simple reflection of reality. Europe is coalescing into a single bloc on the basis of interests and values while the community of interests across the Atlantic is weakening. Europe's rise as an international actor is an *effect* of transatlantic differences, not their cause. Transatlantic conflict, while not exactly welcome, is a symptom of broader changes that in themselves are favorable. The United States has too much influence in the international system. The articulation of a single European voice, the creation of strong EU regulatory bodies, and the many other developments that strengthen Europe relative to the United States are to be welcomed. The problem is not conflict caused by a more assertive EU but the reluctance of the United States to gracefully yield to a new order. The emergence of a single European voice in specialized agencies and technical bodies may result in their politicization and a temporary decline in their effectiveness, but this surely is preferable to a consensus achieved around American norms, helped along by the hub-and-spoke pattern of contact between Washington and European capitals. Any attempt to preserve outmoded Atlantic structures based on an unequal role for the United States is bound to fail or, to the extent that it succeeds, will do more long-term damage to relations than would a shift to overt bipolarity.

There is some validity to this argument. As noted below, opportunities for improved bilateral cooperation would arise in a world in which the United States and the EU had come to function as autonomous poles in the international system. The problem with this argument, however, is that it assumes that a bipolar Atlantic order would be multilateral in the sense that this term was used in the post-1945 era. Little evidence supports this conclusion. Even if a bipolar order is accepted as inevitable, it does not follow that the emergence of a more unified and assertive EU will restore the patterns of international and transatlantic cooperation that characterized the golden age of postwar multilateralism. If it is the case that the United States is using its position in the international system mainly to pursue unilateral gains, then the creation of an EU-based counterbalance to U.S. power at best will create the prerequisites for a new order that may or may not be conducive to multilateral cooperation. If, on the other hand, the existing multilateral system still has some of the self-binding effects on the United States that Ikenberry and others claim that it should, then this counterargument is even more problematic: continuing to weaken this order with the aim of replacing it with a more bipolar order will represent a net loss for multilateralism. If one assumes that U.S. behavior lies

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somewhere between the two extremes—not as self-binding as Ikenberry and other theoreticians of multilateralism would like it to be but a good deal less unilateralist than its positions are characterized as being in the European debate (which almost requires the image of a "rogue America" to justify Europe's ambitious international agenda)—then the continued decline of Atlantic multilateralism on balance is likely to *diminish* prospects for a stronger multilateral order. The increasingly vociferous disputes in the international system about unilateralism most likely are a sign that this process is already well under way.

UNILATERALISM

In recent years, there has been a tendency on the part of foreign policy practitioners and analysts to reify multilateralism—to treat it as having an existence independent of the states and governments that actually create and sustain consensus-based international order.[40] This approach, which often goes along with a tendency to mythologize the 1940s and its generation of "wise men," overlooks the historical origins and contingent nature of international order. No institution starts out as inherently multilateral. The Soviets denounced the Marshall Plan, the creation of West Germany, the founding of NATO, and much else as colossal acts of American unilateralism taken in defiance of what they insisted were the *real* multilateral norms: the Teheran, Yalta, and Potsdam accords worked out during the war. In today's world of what one scholar has called "multi-multilateralisms,"[41] there is even less justification to treat multilateralism as something exogenous to the behavior of states in particular situations.

This is nowhere more true than with regard to transatlantic relations, where multilateralism was essentially endogenous to the U.S.–Europe relationship from the late 1940s onward. As Ruggie has argued, postwar multilateralism was American in inspiration, but its international realization was highly, indeed almost exclusively, transatlantic. The Soviet bloc either shunned or was excluded from most cooperation that straddled the East–West divide, whereas the developing countries were largely marginalized from the system, at best enjoying derogations and opt-outs from any real obligations, at worst undercutting the work of most multilateral institutions by using them as fora in which to conduct political warfare against one another or the West.

The fact that the transatlantic relationship was multilateral and, conversely, that multilateralism mainly applied in the transatlantic context did not mean, however, that what later came to be called unilateralism played no role in relations between the United States and its European allies. Quite the contrary. Given the existence of at times contradictory global, Atlantic, and European multilateralisms, a certain amount of conflict over unilateralism was, for all practical purposes, built into the postwar system.

[40] For reification in international politics, see Alexander Wendt, "Anarchy is What States Make of It: The Social Construction of International Politics," *International Organization* 46 (Spring 1992): 410.

[41] David W. Leebron, "Linkages," *American Journal of International Law* 96 (January 2002): 17.

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On the European side, the priority accorded to Europe's internal multilateralism contributed to a kind of structural unilateralism in the Community's interactions with other parts of the international system. When it came to phasing in the internal market and the Common Agricultural Policy, the EC did not hesitate to disregard older and, in strictly legal terms, more authoritative multilateral norms when they clashed with the imperatives of the European project. In the 1960s and 1970s, the EC began concluding preferential trade agreements with former European colonies that were of dubious legality under the GATT, but which Brussels declined to submit to formal multilateral review, relying instead upon the unilateral device of "self-declaration" to assert their legality.[42] In the single-market project of the 1980s, the EC put to rest worst-case concerns about a fortress Europe, but in numerous instances showed that it was prepared to abrogate unilaterally preexisting multilateral obligations to accomplish its objectives. The notorious banana dispute arose when the EC unilaterally extended to the entire single market barriers to Latin American imports that had previously applied to only some member states, in disregard, as a WTO panel later determined, of its GATT obligations.[43] The regulation liberalizing air transport within the Union was seen by many in the international aviation community as a breach of treaty obligations by the member states under the 1944 Chicago Convention.[44] Other directives adopted under the single-market program conflicted with provisions of member state treaties of friendship, commerce, and navigation (FCNs), as was highlighted by Germany's controversial 1993 announcement that it would not abide by the telecommunications procurement provisions of the EU Utilities Directive on the grounds that they would nullify the nondiscrimination provisions of the 1954 U.S.–German FCN Treaty.[45] With regard to enlargement, European leaders resisted any U.S. attempts to influence either the selection of candidate countries or the pace of accessions.[46] Although formally acknowledging its obligations under Article 24.6 of the GATT, Brussels was never sympathetic to third-party requests for compensation for the withdrawal of trade benefits that usually accompanied enlargements.

[42] James H. Mathis, "The Community's External Regional Policy in the WTO" in Pitou van Dijck and Gerrit Faber, eds., *The External Economic Dimension of the European Union* (The Hague: Kluwer Law International, 2000), 129. For an analysis of EU trade preference policies, see Messerlin, *Measuring the Costs*, 197–248.

[43] Christopher Stevens, "EU Policy for the Banana Market: The External Impact of Internal Policies" in Helen Wallace and William Wallace, eds., *Policy-Making in the European Union* (Oxford: Oxford University Press, 1996), 325–351.

[44] G. Porter Elliott, "Antitrust at 35,000 Feet: The Extraterritorial Application of United States and European Union Competition Law in the Air Transport Sector," *George Washington University Journal of International Law and Economics* 31 (1997–1998): 215–222.

[45] Julie M. Grimes, "Conflicts between EC Law and International Treaty Obligations: A Case Study of the German Telecommunications Dispute," *Harvard International Law Journal* 35 (1994): 535–564.

[46] Martin Banks and Peter Chapman, "Prodi Tells Bush: 'Stay Out of EU Affairs,'" *European Voice*, 19 December 2002, 1.

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On the U.S. side, unilateralism was more episodic than structural, but by no means less momentous. Unilateral actions by the United States tended to stem less from developments in the Atlantic relationship, as such, than from the problems that the United States had in squaring its global economic and strategic responsibilities with its existing commitments to allies. Thus, at key junctures since the 1940s, U.S. policy makers concluded that elements of the international order had become dysfunctional and that major strategic shifts were required, if need be in disregard of the existing "rules of the game." Cases in point included the decisions in 1947–1949 not to use the UN institutions to promote European recovery but to set up a parallel set of regional structures, the suspension in the early 1970s of the Bretton Woods system and its replacement with a new system of floating rates, and the "aggressive unilateralism" of U.S. trade policy in the 1980s.[47]

Even more dramatic were the twists and turns in U.S. security policy, as the United States adjusted, often through actions that were perceived by allies as highly unilateralist, to shifts in the U.S.–Soviet strategic balance and the ebb and flow of conflicts in the developing world. During the Cold War, European allies were not and could not be compelled to engage directly in U.S. military actions outside Europe, but they were never insulated from the effects of what were essentially unilateral U.S. decisions with regard to Vietnam and lesser conflicts. Similarly, the allies had little choice but to adjust to each twist of U.S. nuclear doctrine dictated by electoral shifts and the dynamics of the superpower arms race: from massive retaliation to flexible response to limited nuclear options to Ronald Reagan's flirtation with nuclear abolitionism. Many of the post-September 11 innovations by the Bush administration, for example the stress on preemption in the new national security strategy and the establishment of a special regime for a new class of "illegal combatants," fit squarely in this tradition.[48]

During the Cold War, these U.S. and European unilateralisms fed upon and reinforced each other, but only up to a point. Unilateral shifts in U.S. policy tended to solidify European resolve to build an autonomous Europe, as in the moves toward economic and monetary union that followed the collapse of the Bretton Woods system or the beginnings of the quest for defense and technological autonomy that followed Reagan's Strategic Defense Initiative. Conversely, the United States, on occasion, was spurred into taking drastic unilateral action at the system level after concluding that an inward-looking Europe focused on its own integration project would not share the costs of maintaining the international system in the face of new challenges. *On balance*, however, the realities of the Cold War and the vitality of transatlantic structures helped to keep both U.S. and European unilateralism in check.

[47] Jagdish Bhagwati and Hugh T. Patrick, eds., *Aggressive Unilateralism: America's 301 Trade Policy and the World Trading System* (Ann Arbor: University of Michigan Press, 1990), 113.

[48] Robert Jervis, "Understanding the Bush Doctrine," *Political Science Quarterly* 118 (Fall 2003): 365–388.

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Current transatlantic disagreements over unilateralism must be seen against this backdrop. The period since the early 1990s has been marked by an intensification of each side's traditional pattern of behavior.[49] On the European side, the "transitional" unilateralism associated with the integration project has become an all but permanent feature of EU interaction with the outside world, as "building Europe"—both deepening and widening—has become a virtually open-ended process. Along with the establishment of the euro, the most significant deepening event in the last fifteen years has been the launch of the CFSP and ESDP, both of which go back to the 1992 Maastricht Treaty. From the perspective of the non-EU NATO countries, the decision by the Union to develop a security identity was itself a unilateral act, which the first Bush administration rather clumsily tried to derail. Subsequently, each internally driven stage in the development of a European security identity has required adjustment on the part of NATO: from the January 1994 decision recognizing the designation in the Maastricht Treaty of the WEU as the defense arm of the Union, to the June 1996 Berlin decisions on the link between NATO and ESDP, to the "Berlin plus" arrangements that followed the decision by the EU to abolish the WEU and develop a defense capability within the Union. The fact that the April 2003 "chocolate summit" came close to revising these arrangements yet again shows the degree to which NATO is hostage to internal developments in the EU over which its non-EU member states have only limited control.

In general, CFSP marks a further tilt in European priorities from Atlantic to European multilateralism. This can be seen in the cases of the 1997 land mine treaty and the 1998 treaty establishing the ICC, U.S. rejection of which played such a huge role in creating the image of a unilateralist America.[50] Irrespective of the substantive merits of these agreements, it is difficult to see how prior to the end of the Cold War either could have been concluded on the basis of anything but a NATO consensus. The land mine treaty bans a whole class of weapons, potentially criminalizes contacts between personnel of the same alliance, and raises questions about the status of U.S. mines in the territory of allied states.[51] The ICC has implications for status-of-forces and basing issues among

[49] For a more detailed analysis of recent trends, see John Van Oudenaren, "What Is 'Multilateral'?" *Policy Review* 117 (February–March 2003): 33–47; John Van Oudenaren, "Unipolar versus Unilateral," *Policy Review* 124 (April–May 2004): 63–74.

[50] For background, see Kenneth R. Rutherford, "The Evolving Arms Control Agenda: Implications of the Role of NGOs in Banning Antipersonnel Mines," *World Politics* 53 (October 2000): 74–114; Richard Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," *International Organization* 52 (Summer 1998): 613–644; and David J. Scheffer, "The United States and the International Criminal Court," *American Journal of International Law* 93 (January 1999): 12–22.

[51] The effects of the treaty on NATO can be seen in the various bilateral arrangements that followed its entry into force. The United States stores land mines on the territory of four NATO member states that are parties to the Ottawa treaty: Germany, Norway, the UK (on Diego Garcia), and Greece. Germany and the UK assert that these mine stockpiles are not under their jurisdiction or control. Norway, in contrast, concluded a bilateral agreement with the United States requiring that all U.S. mines be removed from Norwegian territory by 1 March 2003 in order to bring Norway into compliance with

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allies. In circumstances in which the EU member states still accorded a certain deference to NATO in security affairs, it simply would not have made sense for the European countries to combine their own strength in numbers with a miscellany of non-European states to put together "multilateral" coalitions that did not include—indeed that in many ways were designed to exclude—their chief transatlantic ally.

In non-security areas, meanwhile, the EU continues to insist that bilateral and multilateral understandings with third countries give way when doing so is seen as essential to progress in one aspect or another of building Europe. Cases in point include the 2002 decision by the ECJ that bilateral aviation treaties between the United States and eight EU member states must be renegotiated because they conflict with Union single-market legislation, the decision by the EU transport ministers to overlay the signals used in the Union's Galileo satellite navigation system on those previously reserved for U.S. and NATO military use, and the energy commissioner's campaign to transfer oversight of European emergency oil stocks from the OECD-linked International Energy Agency to the EU and the Commission itself.[52] None of these issues are in themselves all that important, and all either have been or are in the process of being resolved by careful transatlantic diplomacy. Collectively, however, they point to a mind-set according to which even unilateral actions by the EU, to the extent that they are taken to strengthen "multilateral" Europe against "unilateral" America, are *ipso facto* multilateral.

Perhaps the most far-reaching manifestation of the tendency toward a certain form of unilateralism on the part of the post-Cold War EU is its promotion of a new global governance agenda. This is a paradoxical claim. Global governance mimics the rhetoric and techniques of traditional multilateralism, while rejection by the United States of this agenda is seen by many observers as the essence of *U.S.* unilateralism.[53] But the roots of this agenda arguably are more in the internal development of the integration project than in the postwar multilateralism with which it is often associated. European integration always has had a tendency to radiate outward: for norms and standards initially favored by a few member states to be generalized to the Union as a whole, then spread to the periphery by means of association agreements that externalize the *ac-*

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the treaty. France, Denmark, and Spain have declared that the transit of mines through their territory is prohibited by the treaty; Canada, Norway, and Germany indicate that the same treaty permits transport; other states are silent on the issue. See International Campaign to Ban Landmines, *Landmine Monitor Report 2001* (New York: Human Rights Watch, 2001), 1–14 for various implementation issues.

[52] On aviation, see *Commission v. United Kingdom, Denmark, Sweden, Finland, Belgium, Austria, Germany*, Cases C-466/98-476-98 (consolidated), Judgment of 5 November 2002; on oil stocks, Daniel Dombey and Kevin Morrison, "European Commission Assesses Threat to Oil Supplies," *Financial Times*, 27 May 2004. On Galileo, see Gustav Lindström with Giovanni Gasparini, *The Galileo Satellite System and Its Security Implications*, EU Institute for Security Studies Occasional Paper, No. 44 (April 2003). The Galileo issue was resolved at the June 2004 U.S.–EU summit.

[53] See Commission on Global Governance, *Our Global Neighborhood: The Report of the Commission on Global Governance* (New York: Oxford, 1995).

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quis, and eventually universalized through international treaties. The governance agenda that the EU has promoted in recent years reflects this pattern, as Brussels increasingly presents itself not only as a model for multilateralism but also as the embodiment of a set of substantive norms that has or ought to have universal applicability.

This trend was very much in evidence in the Union's approach to Kyoto, where the push for mandatory emissions cuts in the whole of the developed world grew out of a desire to avoid the adoption of an EU-only carbon tax that would have disadvantaged European industry.[54] It also can be seen in the Union's near-solitary championing of the so-called Singapore issues in the WTO, which, if taken far enough, would universalize internal EU protections against various forms of "social dumping." The unilateralism reflected in the EU's approach to governance explains its differences with the United States on many issues, but also the rather limited success that the EU has had—notwithstanding the fact that it has been competing with an extremely unpopular U.S. administration pursuing policies that are rejected in much of the world—in winning over other powers and groupings to its agenda. This was seen, for example, in the foot-dragging by Russia and others over the ratification of Kyoto and in the developing countries' harsh break with the EU over the Singapore issues at the 2003 Cancún WTO ministerial.

If the end of the Cold War and the bipolarization of transatlantic relations has given freer rein to the EU's propensity to act unilaterally, the same is true of U.S. policy, albeit in a different way. U.S. actions perceived as unilateralist can be divided into two categories, those of omission (failure to sign the land mine and ICC treaties, rejection of Kyoto, Senate rejection of the Comprehensive Test Ban Treaty), and those of commission (use of force against Iraq without explicit UN Security Council authorization, legal innovations with regard to the war on terror, withdrawal from the Anti-Ballistic Missile Treaty). The unilateralism of omission is arguably a red herring, attributable to flat-footed U.S. diplomacy under the Clinton and George W. Bush administrations, effective public relations on the part of advocates of certain international agreements, and conceptual confusion among analysts concerning international law and organization. The overall trend under George H.W. Bush, Bill Clinton, and George W. Bush has been for an increasing range of U.S. policies to come under a thickening network of international and transnational norms and standards, many of which are increasingly enforceable by the courts or subject to external review. Significant developments along these lines include U.S. acceptance of binding dispute resolution in the WTO, the development of a strong U.S.–EU antitrust regime (and the relative equanimity with which Washington has accepted such developments as the EU's blocking of the GE–Honeywell merger or its fines on Microsoft), and adherence to a growing list of interna-

[54] Jon Birger Skjærseth, "The Climate Policy of the EC: Too Hot to Handle?" *Journal of Common Market Studies* 32 (March 1994), 25–45.

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tional environmental treaties, Kyoto notwithstanding. The "unilateralism" associated with the rejection of a small number of multilateral treaties in the late 1990s is mostly an artefact of a push by other actors in the system—nongovernmental organizations, self-proclaimed middle powers, and, ultimately, the EU and its member states pushing the governance agenda—to seize the initiative and to redefine both the substantive and procedural aspects of multilateralism in ways that favor their interests and undercut U.S. power.

The same cannot be said, however, for U.S. acts of commission, many of which are unilateralist under any definition. Washington always has had a tendency to act unilaterally in the face of major systemic challenges, often, but by no means always, winning grudging after-the-fact acknowledgment that the status quo was untenable and change was required. The end of the Cold War and the emergence of new challenges in the Middle East and Asia clearly are accentuating this tendency. The United States increasingly differs with Europe over how to decide on the legitimate use of force in international relations, inasmuch as Europe insists that only the UN Security Council can authorize such use, while Washington views UN approval as desirable but not essential. Concepts of preemptive action and preventive war that have crept into U.S. national security doctrine are largely rejected in Europe, as are innovations in the way that the United States has conducted its war on terror since September 11. The style of U.S. diplomacy also is said by many to have changed, placing less emphasis than in the past on consultation. This has meant that even U.S. rejections of one-sided European initiatives that might have been justified as consistent with multilateral behavior have come across as unilateralist for the style in which they were conveyed to the rest of the world.

These trends set the stage for what could well be a deepening transatlantic divide over unilateralism. Europe will be motivated to pursue a governance agenda shaped by an interest in extending European preferences to other parts of the world. This will run headlong into a U.S. polity in which influential domestic forces chafe at even the more modest multilateral strictures by which the United States has bound itself for decades. Ultimately, these parallel unilateralisms could interact with each other in highly negative ways, as the EU seeks to constrain U.S. power by the pursuit of its governance agenda while the United States becomes increasingly wary of constraints on its international freedom of action.

While a Democratic victory in November 2004 might have improved the atmospherics of the transatlantic relationship, it is unlikely that a mere change of administrations in Washington would have altered (or in the future will alter) the fundamentals of this dynamic. With the traditional multilateral Atlantic framework crumbling, there is increasingly less structure in which to embed even a U.S. policy that tried to be more multilateral. In a bipolar transatlantic order, policy choices will boil down to yes/no decisions as to whether the United States can (or *must*, in the case of projects such as the ICC or Kyoto) act in accordance with decisions taken in Brussels, Paris, and Berlin. Almost any U.S.

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administration will have difficulty in deferring to Europe under these circumstances, particularly given Europe's insistence upon maintaining complete freedom of action with regard to its own internal development and external policies.

Back to the Future or Forward to the Past

This article has argued that European integration, far from underpinning or serving as a model for multilateralism, is one of the major forces tearing down what remains of the postwar multilateral system. This conclusion should not be all that surprising to scholars. It is consistent with a social science literature that, although not definitive on the issue, is sensitive to the idea that the dynamics of competition and cooperation in a setting with two major actors will differ from those in more pluralistic settings. It is supported by a growing body of historical research that, beginning with Alan Milward's pioneering work, has documented the often strained relationship between European integration and other multilateral norms and institutions.[55] And it is consistent with a long-standing view in the economic and legal literature that bilateralism generally is inimical to a liberal order.[56]

Nonetheless, this argument is certain to be controversial, both with Europeans convinced of the EU's "inherent multilateralism" and Americans who want to see in Europe a beacon of hope against the darkening sky of U.S. unilateralism. It therefore is important to stress what the argument is *not*. First, it is not intended to deny the success, as defined in its own terms, of the European integration process. This process undoubtedly has solved important problems within Europe, including Franco-German reconciliation and, more recently, the integration of the post-Communist countries into the international order. Second, the argument is not about blame or first causes. The United States, through its handling of Suez, Vietnam, and the international monetary crisis of the late sixties or by any number of other actions, may have encouraged or even caused Europe to take the trajectory that it did. A crucial task for future historians, in fact, will be to answer the question of at what point the possibility of a genuine Atlantic community was irrevocably lost: was this something that was *never* really in the cards, given the preference of great powers to maintain their independence and to balance rather than bandwagon, or was it lost at Suez, in the Kennedy administration's implicit decision to subordinate relations with allies to the requirements of nuclear competition and cooperation with the Soviet Union, or was there even a window still open as late as 1969–1971, after Charles de Gaulle's departure from the scene and as Georges Pompidou was casting about for a post-Gaullist policy for France?[57]

[55] See Alan S. Milward, *The Reconstruction of Western Europe, 1945–1951* (Berkeley: University of California Press, 1984), esp. the summation of his argument on 446–447.

[56] See William J. Diebold, "The History and the Issues" in William J. Diebold, ed., *Bilateralism, Multilateralism and Canada in U.S. Trade Policy* (Cambridge, MA: Ballinger, 1988), 1–36.

[57] Marc Trachtenberg leans toward the Kennedy administration as a key turning point. See his *A Constructed Peace: The Making of the European Settlement, 1945–1963* (Princeton, NJ: Princeton Uni-

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The key question for today is what a continuation of present trends will mean for transatlantic relations and the international system as a whole. As this article has argued, continued EU efforts to build a European pillar by bipolarizing the transatlantic relationship are likely to accelerate the decline of U.S.–European relations rather than, as is often claimed, usher in a new era of partnership. Even if European leaders and opinion makers try not to fan anti-Americanism, over time, EU policies will create what constructivist theorists would call a new social reality for transatlantic relations.[58] It simply defies logic to assume that the Union and its core member states can frame European economic, foreign, technology, regulatory, and cultural policies in terms of rivalry with the United States, range themselves on the far side of China, India, and Russia in a growing list of disputes, form "strategic partnerships" with all power centers *except* the United States, and promulgate a version of multilateralism that essentially de-legitimizes American understandings of international cooperation and sovereignty, after which, at some as yet undetermined point, Europe will decide that it finally is strong enough for partnership.

This, in any case, would be a best-case outcome. More likely, Europe's drive to become a pole or pillar will be accompanied by a substantial degree of official and unofficial anti-Americanism. One French official has cautioned that "multipolarity is not a code word for anti-Americanism."[59] In practice, however, the European pursuit of multipolarity is likely to depend heavily on attempts to unify other centers of power against the United States on as many issues as possible. Given that Europe is, and for some time is likely to remain, the weaker half of the U.S.–EU dyad, such efforts make sense and are consistent with actual EU policies with regard to Kyoto, the Galileo satellite system, and the Union's "strategic partnerships."[60] But this approach is certain over time to feed back into the U.S. policy debate, creating, to the extent that it is successful, fear and concern and, to the degree that it is unsuccessful, the image of a weak, opportunistic Europe pursuing a kind of scavenger policy at U.S. expense.

Are there scenarios in which the transatlantic multilateral order might be preserved and revitalized? The usual suggestions—increased U.S.–EU dialogue

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versity Press, 1999); for a fascinating argument pointing to the failure of the December 1971 Azores summit of Pompidou and Nixon as a turning point, see Georges-Henri Soutou, "Georges Pompidou and U.S.-European Relations" in Marc Trachtenberg, ed., *Between Empire and Alliance: America and Europe during the Cold War* (Lanham, MD: Rowman and Littlefield, 2003), 157–200.

[58] Wendt, "Anarchy," 403–407; Alexander Wendt, "Constructing International Politics," *International Security* 20 (Summer 1995): 77.

[59] Jean-Marie Guehenno, "Multipolarity and Multilateralism" in CERI/India International Centre, *India and France in a Multipolar World* (New Delhi: Manohar, 2001), 31.

[60] Stephan de Spiegeliere notes that the EU applies this term with regard to the Mediterranean region, Russia, Latin America, Mercosur, the Gulf Cooperation Council, the Caucasus, Ukraine, Turkey, India, and the Western Balkans. The one country for which the term is *not* used is the United States. Stephan de Spiegeliere, "The Implementation of the EU's Common Strategy on Russia" in Hiski Haukkala and Sergei Medvedev, eds., *The EU Common Strategy and Russia: Learning the Grammar of CFSP* (Helsinki: Finnish Institute of International Affairs, 2001), 111.

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and "grand bargains" of various kinds—are unlikely to make much difference.[61] They fail to address and, in many cases, actually reinforce the very source of the problem, namely, a bipolar transatlantic relationship that by definition can never be multilateral.

Theoretically, a revival of Atlantic multilateralism might come about in two ways. The first would involve a regression from the current bipolarization of the transatlantic order. This would entail a scaling back of European ambitions to transform the EU into a fully autonomous, integrated Europe with the entire range of capabilities determined to function as a pole in the international system. NATO would be revitalized as a forum for transatlantic and European consultation. In the domestic sphere, this scenario would not mean a reversal of the European single market, but it would mean a shift toward the pursuit of regulatory norms and standards in Atlantic or global settings and a downplaying of the Union's self-proclaimed role as the protector of Europe from the excesses and dangers of (American) globalization. Europe would keep its current level of representation in international institutions, but block voting would not be enforced and efforts by third countries to influence the votes of individual European countries would not be seen as inadmissible interference in EU internal affairs. Such a shift would have to be imbued with positive intellectual and political content—the functional equivalent of the ideals of Atlantic community that prevailed in the 1950s and 1960s—and could not simply represent an admission that Europe had failed in its quest to play a larger and more autonomous role on the world stage.

On the U.S. side, the regressive scenario would require abandonment of the long-standing and uncritical U.S. support for European integration, *coupled with*, however, a reversion to the best practices of the postwar period that would reflect greater respect for and deference to European interests and concerns. European governments would have to see that they had real opportunities to influence U.S. policy, bilaterally, in the G-7, and in NATO. Confidence that this was the case could only be won over time in actual practice, and not through abstract understandings that neither side would be likely to honor in the breach. In broad terms, the regressive scenario would imply a rebalancing of the relationship between Atlantic and European multilateralism in favor of the former or, at a minimum, a recognition by all parties (such as does not now exist) that there are limits beyond which European multilateralism will not go in its quest to supersede Atlantic structures. For both the United States and Europe, a key asset in bringing about such a scenario would be the dense network of economic, cultural, and personal ties that has continued to expand across the Atlantic even in times of political tension.

Realization of the regressive scenario seems unlikely, however. The bureaucratic and ideological momentum behind the European integration project

[61] See, for example, Andrew Moravcsik, "Striking a New Transatlantic Bargain," *Foreign Affairs* 82 (July/August 2003): 74–89; see also Timothy Garton Ash, *Free World: America, Europe, and the Surprising Future of the West* (New York: Random House, 2004).

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is unlikely to be reversed, at least in the medium term. Many Europeans who disagree about the internal organization of the Union tend to support a stronger external EU role. Prospects for a revitalization of NATO are at best uncertain. The United States clearly made mistakes in its post-September 11 handling of the alliance, but it is disingenuous for Europeans to suggest that they ever were serious about using NATO as a mechanism for building transatlantic consensus on post-Cold War security issues. The French and others fiercely resisted the expansion of NATO into an antiterror role, to out-of-area missions, or, as the land mine and ICC cases suggest, even its use for promoting a minimal consensus on foreign policy issues with defense implications. Deprived of *any* influence on U.S. policy in Afghanistan and Iraq, some Europeans came to see NATO as a possible vehicle to restore a modicum of influence. But there is little to suggest that NATO, for the French and others, could ever be anything but a one-way street: an argument for constraining U.S. options, but one that in no way could impinge on Europe's long-term quest for foreign policy and defense autonomy.

More fundamentally, establishing a new intellectual and political basis for a revived Atlanticism that could command consensus in Europe would be very difficult. Although, in principle, "the West," defined in civilizational and cultural terms against Islamic terrorism or a rising China, might provide such a basis, globalization and the increasing diversity of views, identities, and interests, both within Europe and across the Atlantic, militate against such an outcome.[62] And although transatlantic economic, cultural, and personal ties could play a role in helping to bring about this scenario, their importance should not be overstated. The absolute level of such links has continued to grow, but, in relative terms, they are falling ever farther behind the thickening network of intra-European ties.[63]

Nor is it likely that the United States could manage the adjustments on its part that the regressive scenario implies. The U.S. role in bringing about such a scenario would have to be largely passive—responsive to change on the European side but in no way seeking to promote the unwinding of the integration project. It seems unlikely that the United States could pursue such a patient policy under post-Cold War conditions. Europeans would be exposed to the thinly veiled contempt for Europe that has taken hold in recent years on the political right. From the opposite side of the spectrum, they would confront the only slightly less problematic Eurocentric hyperactivity that marked U.S. policy in the 1990s—the preoccupation with being busy in and with Europe that pre-

[62] For an analysis of shifting concepts of national identity that might complicate the pursuit of such an outcome from the American side, see Samuel P. Huntington, *Who Are We? The Challenges to America's National Identity* (New York: Simon & Schuster, 2004).

[63] This is especially the case with the countries of central and eastern Europe, which are losing many of the publicly and privately funded exchanges with the United States that followed the collapse of Communism, even as they are fully integrated into such EU-sponsored programs as TEMPUS and Erasmus.

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vails in Atlanticist circles, the effect of which will be to crowd the psychological space in which European elites might be encouraged to rethink their course in the world.[64] Either U.S. approach—or worse, both, interacting with each other—would be enough to convince European elites that they had no choice but to press on with creating their own pole.

A variant of the regressive scenario might involve a split of the EU into core and non-core components, such as has been discussed in the context of the constitutional ratification debate. Core Europe would be built around France and Germany and would include a number of other states. It would be powerful enough to act as something of a mini-superpower on the global scene, with resources and capabilities at the level of other potential poles in the international system (Japan, Russia, India, and Brazil), and to buffer continental Europe at least somewhat against the depredations of unchecked globalization. It would satisfy the desire of elites in Paris, Berlin, and Brussels for a global role, but perhaps be less inclined than today's Union to measure itself against and challenge U.S. power across all indices.

Non-core Europe could be organized in a looser, free-trade arrangement that would include at least several medium powers and a number of smaller countries. Such an arrangement would have to be regarded as permanent (variable geometry rather than variable speed) and enjoy both European and domestic legitimacy. Non-core states would have to be accorded a stable place in the European order and not be regarded as recalcitrants who eventually must see the light and join core Europe on terms set by Paris and Berlin. Externally, the existence of core and non-core Europes would reintroduce elements of flexibility into the Atlantic system, providing bridges and buffers between the United States and core Europe and creating new political space for peripheral powers such as Canada, Ukraine, and indeed, Russia. NATO could be organized as something of a hybrid between the completely multilateral, consensus-based model favored by the United States and the "dumbbell" model that represents the logical end point of the bipolarization process.[65] Core Europe could function as a political or even operational unit within the alliance, while non-core countries would operate as autonomous members alongside the United States and Canada. In the UN, France-Germany-core Europe might share a single permanent seat on the Security Council. The UK would retain its seat, while the WEOG and East Europe groupings might be cut from their present total of three non-permanent seats to one, or at most, two, thereby scaling back the maximum EU member state representation on the Security Council from its present five to a more reasonable level of two or three seats.

[64] It is perhaps telling that a recent Democratic manifesto calling for a U.S. strategy of revitalizing alliances and international institutions—including "refocus[ing] NATO on the challenge of transforming the greater Middle East"—does not contain a *single reference* to the EU. See *Progressive Internationalism: A Democratic National Security Strategy*, 30 October 2003, accessed at http://www.ppionline.org/specials/security_strategy, 22 December 2004.

[65] It is worth noting that in the 1940s, Dean Acheson explicitly rejected a dumbbell structure for NATO. See Peter F. Cowhey, "Elect Locally—Order Globally: Domestic Politics and Multilateral Cooperation" in Ruggie, ed., *Multilateralism Matters*, 163.

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This variant of the regressive scenario also would be difficult to realize. It, too, flies in the face of deep-seated aspirations for a stronger global role that exist throughout Europe. It would be especially problematic for countries such as Italy and the Netherlands that have strong Atlantic *and* European identities. European countries would be hard-pressed to manage what German Foreign Minister Joschka Fischer has called the "friction" between its core and non-core parts. European countries also would resist ferociously the scaling back of their role in the UN and other international institutions, while all of the caveats relating to the U.S. ability to respond to the other regressive scenarios would apply in this case as well.

The other path toward a revival of transatlantic multilateralism would be progressive rather than regressive. It could come about as a consequence of the emergence of a new multipolar international system, the effect of which would be to embed the two poles of the Atlantic order in a broader international system in a way that would encourage, indeed require, the restoration of multilateralism in their relations with each other. Many European leaders claim to want such a world, but clearly, they have not thought through what, in fact, would be a leap into the unknown. They seem to envision a world in which Europe would keep all of the privileges and positions inherited from the older Atlantic multilateralism, continue to command unconditional support from Washington for the integration project, and be free to persist in efforts to enlist the other poles of power in strategic alliances aimed at constraining the United States.

True multipolarity, of course, would be rather different; it would mean a more fluid, competitive, and less predictable international order, one in which Europe might be hard-pressed to maintain its present level of global influence. Europe would be under pressure to consolidate its representation in international institutions and to cede influence to Asia and other parts of the world. To be recognized as truly multilateral, international agreements would require substantial support from all or most of the other poles in the system (the United States, China, India, EU, and so forth) rather than the piling up of numerical majorities of "like-minded" states. NATO might continue to exist as a set of legal obligations along the lines of the Rio Pact or as a bilateral U.S.–EU treaty similar to the U.S.–Japan defense pact, but the United States would wash its hands of any attempt to order security relations in Europe and could hardly take for granted European backing for ventures such as Iraq and Afghanistan. For its part, Europe could not expect to exercise a special influence, much less a veto, over U.S. policy outside Europe.

Consistent with the logic of multipolarity, the United States and the EU would be as likely in theory to form coalitions with other powers as with each other. However, some aspects of U.S.–European relations actually might improve, inasmuch as each side would have reasons to seek the support of the other rather than to try mobilize third powers to break situations of transatlantic stalemate. Anti-Americanism might abate in Europe, as the United States came to be seen as the least alien and least threatening power in a world in which all

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powers were alien and threatening. In addition, nongovernmental transatlantic economic, cultural, and personal ties presumably would survive realignments at the governmental level, helping to ensure that the United States and the EU would be among the closest, if not the closest, of the poles in the international system.

In broad terms, the progressive scenario would mean the full playing out of the possibilities inherent in European multilateralism and the diminution, to the point of irrelevance, of Atlantic multilateralism. The implications for global multilateralism would be indeterminate, with Ruggie's distinction between "nominal" and "qualitative" multilateralism particularly germane. Barring a total breakdown of international order, nominal multilateralism would operate on a global scale, as already can be seen, for example, in China's accession to the WTO, the special role of Brazil and India in the same organization, and the workings of the UN Security Council, which, for now, is neither paralyzed by division into permanent camps nor marked by the kind of harmony that might be seen in a global concert. But whether the global order would be qualitatively as well as nominally multilateral is an open question. To be so, those generalized principles of conduct—nondiscrimination, indivisibility with respect to appropriate behavior, and diffuse reciprocity—that Ruggie identified with postwar, American-led Atlantic multilateralism would have to be relevant on a global scale. These principles, by definition, no longer would apply in the thoroughly bilateralized U.S.–European relationship, but the United States and Europe, separately or together, might play a role in promoting the adoption of these principles on a global scale.

It may well be that over time, the United States and the EU will evolve in precisely this direction: toward a close bilateral and bipolar relationship that would exercise positive influence on and be constrained by a broader multipolar global order. This would seem to be the logical end point of trends already well under way, notably the rise of China, the continued progress of the European project, and the drift of the United States away from its traditional Atlantic orientation. In the short-to-medium term, however, it is unlikely that either the United States or key European leaders will do much to actively promote the emergence of such a world. For the United States, to do so would mean to renounce influence in Europe, whereas for Europe, it would mean the end of any claims to a special role as a partner of the United States. This, combined with the unlikelihood of the regressive scenarios being realized, means that the U.S.–European relations are likely to continue their present, downward course. To the degree that leaders intensify their efforts to build a partnership based on the development of a European pillar, these relations will deteriorate even more precipitously, with continued negative effects on multilateral order, both across the Atlantic and in the broader international system.

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The 2004 Presidential Election: The Emergence of a Permanent Majority?

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The 2004 election results are best viewed from the perspective of incumbent-versus-challenger evaluations and of retrospective and prospective evaluations. Incumbent President George W. Bush survived Senator John F. Kerry's challenge mainly because he convinced a small majority of voters that he had done a good enough job and that the prospects for positive government performance were sufficiently good that he should be reelected. This produced, according to the major exit poll, summary evaluations by the electorate that were narrowly favorable to Bush and narrowly negative for Kerry. These evaluations were closely reflected in the division of the vote.

The most distinctive feature of the presidential election of 2004 was its similarity to the election of 2000. The change in the popular vote was small, as was the change in the pattern of outcomes in the states and the resulting electoral vote. Once Kerry had effectively secured the Democratic nomination for president, he and Bush were locked in a close contest. Throughout the spring and early summer, Kerry trailed Bush by one or two percentage points in the polls.[1]

[1] These trial heat data are presented in a convenient way, including their overall average view, by James A. Stimson, "Bush v. Kerry Daily Summary of Trial Heat Polls," accessed at http://www.unc.edu/~jstimston/, 25 January 2005.

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He even held a very small lead over Bush from July until about the middle of August. Bush got a healthy convention "bounce" to a lead of three or four percentage points, but Kerry's stronger performance in the debates narrowed Bush's lead to an average across the various polls of 50.9 percent for Bush to 49.1 percent for Kerry on 31 October, very close to the final result. To be sure, Bush picked up about two points in the major-party vote from his first to his second election, but that is very little gain for an incumbent successfully seeking reelection.

Not only were the last two presidential elections very close, but they also shared a great many other similarities. Perhaps most obviously, only three of the fifty states switched sides in the two contests, and these involved small changes in vote percentages that tipped two states (Iowa and New Mexico) that narrowly voted Democratic in 2000 to voting Republican in 2004 and one state (New Hampshire) that narrowly voted Republican in 2000 to voting Democratic in 2004. Bush's electoral vote increased from 271 to 286, and eight of the fifteen votes he gained came from switches among these three states. The remaining seven-vote gain resulted from a net increase of House seats among the twenty-nine states that he won in both 2000 and 2004.

Still, the major story about the 2004 elections is its narrow Republican victories. There was very little change in the House vote. The Republicans picked up four additional seats, but these gains resulted from a partisan redistricting plan in Texas that was implemented in 2003. The Republicans also picked up four Senate seats, giving them a secure, but not filibuster-proof, majority. Most Senators won reelection handily, but the GOP picked up five open Democratic seats in the South, giving them a large majority in that region. These victories came in states that Bush won handily as well, so it is possible that, in this precise and specific way, Bush had presidential coattails.

In addition, most groups voted in 2004 much as they did in 2000. The most notable exceptions were Hispanics, who supported Kerry less strongly than they did Al Gore in 2000, and a shift of women to Bush that reduced the "gender gap" in 2004. The candidates campaigned in much the same way as well. They traveled to, spent advertising money in, and focused campaign organizational efforts on a small number of "battleground" states—almost exactly the same battleground states in 2004 as in 2000. This meant that the residents of most states saw little of the presidential contest in either election. Except for the presidential and vice presidential debates, they did not see the candidates, hear their speeches, or see or hear their ads (what became known as the "air war" in the battleground states); they scarcely witnessed even much of the national campaigns' organizing of registration and turnout drives and other lower-profile aspects of campaigning (campaign flyers, telephoning, radio and other local advertising, and so on) that make up the "ground war."

Despite the similarities, important differences, particularly in electoral context, can be found between the two years. The impact of September 11, of two "hot" wars, in Afghanistan and in Iraq, and of the war on terror at home and

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abroad meant that no candidate could long ignore peace and security. Incumbency had switched between the parties. And although incumbent Vice President Gore could run a campaign that was surprisingly distinct from the Clinton administration, Bush could not have run as anything other than the incumbent president. Gore distanced himself from Bill Clinton and the Clinton–Lewinsky scandal, but as a result, he also distanced himself from a nearly eight-year economic boom, although one that was beginning to end. Bush could not distance himself from the economy, because presidents are held accountable for its performance. At the start of the year, the Democrats were happy to remind the public of the President's accountability. As the year wore on, Bush's claim that the economy had turned the corner was reflected in the hard indicators of economic performance and, then, increasingly in the eyes of the public. To be sure, he was not riding a boom, as was Clinton in 1996 or as was Ronald Reagan in 1984, but the voting public was, on balance, slightly positive about the economy—maybe slightly, but still just enough for Bush to avoid a downfall like his father's twelve years earlier.

These differences in electoral context—foreign affairs and the economy—lend themselves to incumbent-versus-challenger assessments and, as will be discussed below, to retrospective and prospective evaluations. These contrast with the common interpretations of the 2004 presidential election, at least those offered by pundits in the first months after the voting. Pundits made much of the "red state–blue state" distinction, that is, cleavages between Republicans and Democrats, between conservatives and liberals, to discuss the growing polarization that has characterized congressional politics and national party politics in general and that has, therefore, linked Republicans with conservatism and Democrats with liberalism. To be sure, the two major candidates were, at one and the same time, an incumbent facing a challenger and a Republican opposing a Democrat. It is sometimes difficult to distinguish whether a difference in the vote is tapping more of a distinction between incumbent and challenger or more of a Republican–Democrat difference. However, there are good reasons to suspect that the public chose, this time, between Bush and Kerry more in terms of their evaluations of how well the incumbent performed and how well they thought the challenger might do than in terms of party and ideology. Although both were important components of voters' decisions, we think the former outweighed the latter.

Regional Voting Patterns

As noted above, the 2004 presidential election results were very similar to those of the 2000 election. There was a shift toward Bush of 2.8 percent of the total vote. These gains resulted, in part, from the reduced share of the vote for third-party or independent candidates. With 99.0 percent of the vote going to the major-party candidates, compared with 96.2 percent in 2000, Bush was able to score gains in forty-eight of the fifty states and in the District of Columbia. But Kerry's share of the total vote also increased over Gore's in twenty-six states and DC.

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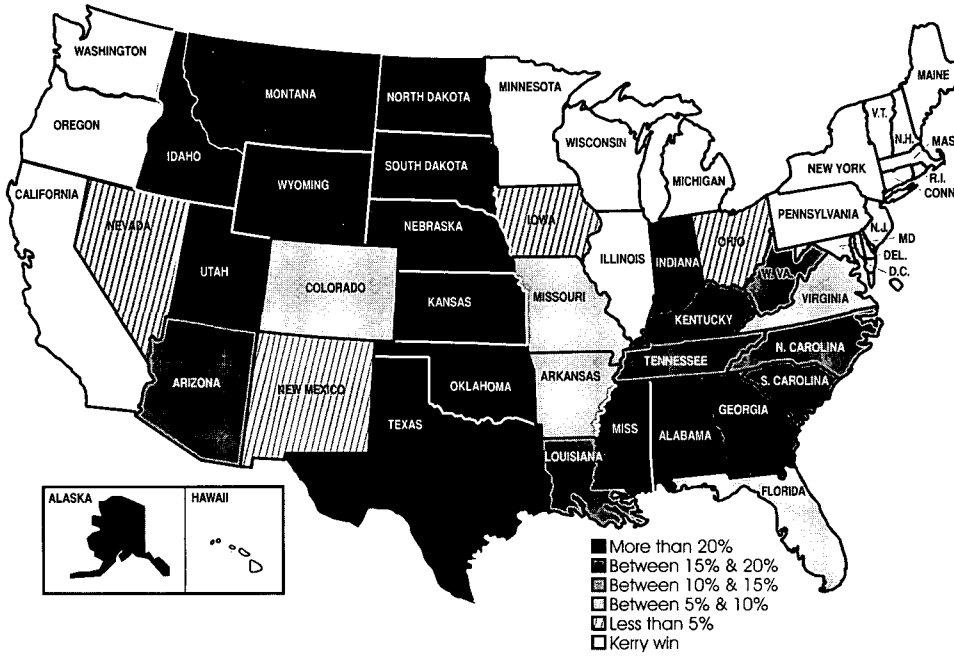
FIGURE 1
Bush's Margin of Victory over Kerry, 2004



Source: "Election Returns 2004," accessed from www.latimes.com 7 December 2004.

The similarity between the 2000 and 2004 results raises the question of voting patterns over a longer time span. Sixteen states with 135 electoral votes have voted Republican in all seven presidential elections between 1980 and 2004. These include six of the Southern States (by which we mean the eleven states of the old Confederacy), all four Prairie States, three of the eight Mountain States, and Alaska, Indiana, and Oklahoma. During this quarter of a century, only Minnesota and DC, with thirteen electoral votes, have remained equally loyal to the Democrats. Indeed, only eight states and DC, with ninety-two electoral votes, voted Democratic in all five elections between 1988 and 2004.[2]

Neither party has an electoral vote base adequate to ensuring victory, and in the wake of short-term forces, either party can win. Although the Republicans have been advantaged since 1980, in 1992, Clinton was able to defeat George H.W. Bush by a 370- to 168-vote margin, winning such "red" states as Arkansas, Colorado, Louisiana, Nevada, and Tennessee. In 1996, Clinton defeated Bob Dole by a 379- to 159-vote margin, winning Arkansas, Louisiana, Nevada, and Tennessee. He even won Arizona, the only state to have voted Republican in all eleven elections between 1952 and 1992.

[2] For presidential election results between 1789 and 2000, see CQ Press, *Presidential Elections: 1789–2000* (Washington, DC: Congressional Quarterly Press, 2002).

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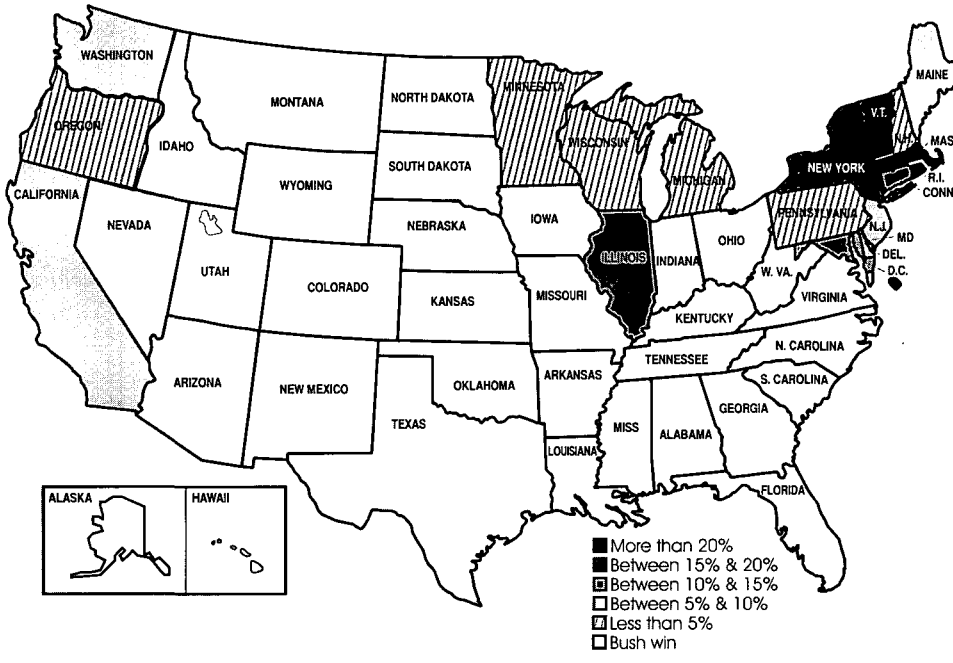
FIGURE 2
Kerry's Margin of Victory over Bush, 2004



Source: "Election Returns 2004," accessed from www.latimes.com 7 December 2004.

The Republicans now rely heavily upon the South, and the transformation of the South from a solidly Democratic region to a Republican region is the most dramatic change in postwar American politics. The Republican strength in this region is impressive, especially given Democratic dominance in the South from the end of Reconstruction through the end of World War II.

But Republican dominance in the South displays a dramatically different pattern in 2004 than in the days of the solid Democratic South, when the Democrats usually won most Southern States by substantial margins. Figure 1 presents a map showing Bush's margin of victory over Kerry in the thirty-one states that Bush won. Figure 2 shows Kerry's margin over Bush in the nineteen states (plus DC) that Kerry carried.

As Figure 1 shows, Bush's victory in the South was strong, but he was strongest in the Prairie States. He also did well in the Mountain West, although he carried New Mexico and Nevada by narrow margins. Figure 2 contrasts markedly with Figure 1. Although Bush won fourteen of his thirty-one state victories by over twenty percentage points of the total vote, Kerry carried only three of his nineteen state victories by this margin, as well as DC. Although he carried all the Mid-Atlantic States, he won with a fifteen- to twenty-point margin only in New York. And of the four Midwestern States bordering the Great Lakes that he won, his margin in three of those four was less than five percentage points. Like Democrats in the last four elections, he carried all three of the Pacific Coast states, but only in California did he approach a ten-point margin.

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Obviously, there is considerable variation among the states, but we would caution analysts not to exaggerate its extent. For example, one can construct a measure of regional voting by taking the percentage of major-party voters in the South who voted Democratic and subtracting the percentage of major-party voters outside the South who voted Democratic. In 1944, the South was twenty-three percentage points more Democratic than the non-South, but these differences declined through 1960, when the South was only three points more Democratic.[3] In 1964, the Republicans fared better in the South than outside the South, and the index of regional voting became −13, greater than the regional difference in any subsequent presidential election. In 2004, the index of regional voting was −8, exactly the same as it had been four years earlier.

We should also emphasize that comparing Figures 1 and 2 suggests that Bush won an overwhelming victory, inasmuch as the states that he won made up nearly three-fourths of the land area of the continental contiguous United States and over three-fourths if Alaska and Hawaii are included. But many of the states that Bush won are sparsely settled. Maps designed to represent states according to their electoral-vote weight reveal a much closer contest.

Candidates and Their Supporters on the Campaign Trail

The way in which candidates and their campaign organizations sought voter support may be viewed as a two-pronged effort. The first, the "air war," is the public face of the campaign, led by the candidates themselves: where the candidates travel, to whom they speak, what their "stump speeches" cover, and, especially, what their televised advertising emphasizes. Because of the highly structured rules governing the debates, the candidates are somewhat constrained, but even here, they can attempt to shape the agenda. This is called the "air war" because it is the campaign most voters see on the televised airwaves, and all of it is, or could easily become, the center of national attention. The second prong is the "ground war," the efforts campaign organizations make in registration and turnout drives, telephone and mailed advertisements, and specialized campaigns "narrow-cast" on cable TV and radio, and through churches and other organizations. Here, messages are often tailored to particular groups and perhaps even individuals. It is called the ground war because it is conducted by a large number of volunteer or low-paid professionals who work on the ground, perhaps going door to door. Although there are occasional media reports about the ground war, it is highly unlikely to become the center of national attention.

These two are not completely distinct efforts, of course, and they are certainly joined together, inasmuch as they both require money and other re-

[3] For scores on this measure of "regional voting" between 1944 and 2000, see Paul R. Abramson, John H. Aldrich, and David W. Rohde, *Change and Continuity in the 2000 and 2002 Elections* (Washington, DC: Congressional Quarterly Press, 2003), 109.

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sources. However, their message and targeted audiences are often distinct. Note that although we will focus, particularly in respect to the air war, on what candidates say, the campaign is also a series of actions, as well as statements. A simple example is where the candidates go and where resources are allocated. Such actions speak a great deal about what the candidates see as the areas in which their efforts will do the most good, whether it is to tip the undecided voters in the "battleground" states (e.g., Florida, Pennsylvania, and, in 2004, especially Ohio) or whether it is to mobilize their base (i.e., turn out those who already favor them).

The Air War

Kerry faced a novel strategic question after accepting the Democratic nomination. Bush's convention followed that of the challenging party, as usual, but it differed from usual practice in being held at the end of August, a month after the Democratic convention. It came just before Labor Day, the traditional opening of the general election campaign. Federal law requires that the candidates, in accepting government funding for the fall campaign, stay within the mandated spending limits once they become nominees. Kerry therefore had to decide whether he should begin to spend this finite amount of money in August, whereas the not yet officially nominated Republican would be able to save his total amount until Labor Day (and still spend unregulated funds from his nomination campaign).[4] On the one hand, Kerry risked being unable to capitalize effectively on the positive glow generated by his convention unless he spent money to follow it up immediately (an air war aspect), and he also might fall behind organizationally (a ground war consideration). On the other hand, if he started spending shortly after the Democratic convention, he would have just that much less with which to contest, say, a Bush media blitz in late October, or to conduct as full a turnout effort as his opponent—or both. He decided to withhold most spending until after the Republican convention, which may have been one reason for the smaller convention "bounce" he received in the polls, compared to Bush.

Candidates develop a standard "stump speech" that has at its core the central message they wish to present to the voters. This is modified from day to day, both to reflect the concerns and interests of a particular audience, and to provide a changing major "theme" of the day, which a candidate's campaign hopes to be the message that the national media report. The latter is an attempt to help shape the campaign's agenda. Most scholarship shows that presidential candidates are not very effective in changing people's preferences over policies—they cannot convert liberals into conservatives or vice versa in the course

[4] Bush and Kerry had both decided not to accept federal matching funds for their nomination campaigns and therefore did not have spending limits.

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TABLE 1

Issues Raised in Campaign Speeches of the Presidential Candidates, March–November, 2004

	Through July		1 September–1 November		Total	
Issue	*N*	*Percent*	*N*	*Percent*	*N*	*Percent*
Major issues in speeches by George W. Bush						
Economy	47	31.1	64	28.2	111	29.4
Terrorism	31	20.5	82	36.1	113	29.9
Iraq	14	9.3	25	11.0	39	10.3
Other foreign policy or military	7	4.6	5	2.2	12	3.2
Health care	6	4.0	16	7.0	22	5.8
Social Security and Medicare	3	2.0	2	0.9	5	1.3
Education	9	6.0	5	2.2	14	3.7
Taxes	4	2.6	16	7.0	20	5.3
Values	15	9.9	7	3.0	22	5.8
Environment	2	1.3	0	0.0	2	0.5
Other	10	6.6	5	2.2	15	4.0
Civil rights	3	2.0	0	0.0	3	0.8
Total	151	99.9	227	99.9	378	99.9
Major issues in speeches by John F. Kerry						
Economy	40	33.6	43	39.4	83	36.4
Terrorism	13	10.9	9	8.3	22	9.6
Iraq	5	4.2	15	13.8	20	8.8
Other foreign policy or military	10	8.4	4	3.7	14	6.1
Health care	8	6.7	5	4.6	13	5.7
Social Security and Medicare	1	0.8	7	6.4	8	3.5
Education	7	5.9	1	0.9	8	3.5
Taxes	5	4.2	6	5.5	11	4.8
Values	15	12.6	9	8.3	24	10.5
Environment	2	1.7	0	0.0	2	0.9
Other	7	5.9	6	5.5	13	5.7
Civil rights	3	2.5	1	0.9	4	1.8
Energy	3	2.5	3	2.8	6	2.6
Total	119	99.9	109	100.1	228	99.9

Source: Data collected by John H. Aldrich, John Griffin, Jill Rickershauser, and the students in Duke University political science course POL 101AS.

of a campaign. What they can do, however, is shape the agenda.[5] That is, they can affect what policy dimensions people care about, but not what people would like the government to do about those concerns.

Table 1 presents the issues on which candidates focused in the campaign.[6] The candidates' speeches were read, and the issues that were major compo-

[5] See Shanto Iyengar and Donald R. Kinder, *News that Matters: Television and American Opinion* (Chicago: University of Chicago Press, 1988).

[6] These data were collected by students in Duke University's Political Science 101AS course for a study in preparation by John Aldrich, John Griffin, and Jill Rickershauser. We are grateful to these students for sharing their data with us.

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nents of their speeches each day were recorded. These were then averaged over all the candidates' speeches from March through the Democratic convention in July, and then again over the September-through-November general election campaign. As Table 1 indicates, the economy was the main concern of both candidates in both the pre-convention and the post-convention period; it was the major theme in about one-third of both candidates' speeches. Terrorism was more important for Bush than for Kerry, indeed becoming more common as an important theme to him than the economy. After the conventions, Kerry talked less about terrorism but more about Iraq, especially as the campaign neared its end. Bush wanted Iraq to be seen as a part of the war on terrorism, whereas Kerry wanted it to be seen as distinct from the war on terrorism and, indeed, as harmful to the successful prosecution of that war. Domestic issues other than the economy were broadly scattered over a wide range of concerns. We do not have measures of what the "narrow-cast" campaign appeals dealt with, but it is at least possible that several of these domestic issues were pursued in this part of the ground war instead of, or in addition to, their discussion in the air war. Neither candidate made values a central theme in his speeches.

The Ground War

A central focus of the ground war was the effort by both candidates' organizations and their allies to maximize turnout among supporters. Given the closeness of the 2000 outcome in Florida and the small number of undecided voters in 2004, the campaigns believed that every vote could be crucial, and their efforts were unprecedented. They allocated far more money to turnout efforts than they had in the past. For example, the Bush efforts budgeted $125 million for voter mobilization, about three times the amount in 2000. Similarly, the Democrats allocated around $60 million, more than twice the 2000 level.[7] Moreover, the efforts of both parties, especially those of the Democrats, were supplemented by the activities of allied groups such as America Coming Together (ACT). In addition, labor unions also supplemented Democratic Party efforts; the AFL-CIO alone planned to spend $45 million in sixteen battleground states.[8]

ACT claimed to have raised about $125 million and to have employed up to 2,500 workers to register new voters and stay in contact with them throughout the campaign. The group said it made sixteen million phone calls in just the last three weeks leading up to election day, sent twenty-three million pieces of mail, and delivered eleven million fliers.[9] Other allied independent groups

[7] Dan Balz and Thomas B. Edsall, "Unprecedented Efforts to Mobilize Voters Begin," *Washington Post*, 1 November 2004.

[8] Vanessa Williams, "Organizing Union Workers to Replace Bush," *Washington Post*, 23 October 2004.

[9] Glenn Justice, "Advocacy Groups Reflect on Their Role in the Election," *New York Times*, 5 November 2004.

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reinforced this pro-Democratic effort, but there were other groups supporting the GOP effort. The Progress for America Voter Fund and its parent organization raised over $50 million and spent nearly $19 million to run commercials in eleven states and on national cable channels. They also sent millions of pieces of mail and thousands of e-mails to influence potential voters.[10]

The Bush campaign made a particular effort to encourage participation by conservative Christian voters. Karl Rove, the president's chief political strategist, believed that Bush lost the 2000 popular vote because millions of evangelical Christians failed to go to the polls. He was determined that this pattern would not be repeated in 2004, and from 2001 on, he sought to build bridges to the Christian right. Incumbents have the advantage in that they can build political support, not just with words, but also with actions, and Bush took many actions designed to please the Christian right and to be visible to them, without making them a major part of the more public appeals of the air war. These actions included the ban on "partial-birth" abortions, limits on embryonic stem cell research, opposition to Oregon's "right-to-die" law, and, especially, support for a constitutional amendment banning same-sex marriage. The efforts touched a responsive chord. Tom Minnery, of Focus on the Family, called Bush "the most openly Christian president we have had in our lifetimes."[11] And the Pew Research Center estimates that the President received ten percentage points more of the white Protestant evangelical vote in 2004 than he did in 2000.[12]

The Democratic mobilization efforts were very effective. Unfortunately for the Democrats, the GOP effort was even more so. In Ohio, the pivotal state, ACT and the Democratic organization exceeded their own expectations. For example, in Cuyahoga County (Cleveland), where ACT had set a target of about 350,000 votes, Kerry actually received over 433,000.[13] Indeed, Kerry received more votes in Ohio than any Democratic candidate presidential candidate in history. This successful effort was, however, overwhelmed by the Republican campaign, which turned out more GOP voters than ever before and produced the narrow victory for the President in that essential state.

Turnout

As we have seen, both parties and their supporters made a major effort to get their supporters to the polls, and six states had expanded or initiated early voting since the 2000 election. Turnout increased over 2000, but how much it increased, and what the effects were of differential turnout by Bush and Kerry supporters, is not easy to sort out. Turnout is a percentage, and scholars agree

[10] Ibid.

[11] Elisabeth Bumiller, "Tireless Push to Raise Turnout Was Crucial in G.O.P. Victory," *New York Times*, 4 November 2004.

[12] Pew Research Center, "Religion and the Presidential Vote," accessed at people-press.org, 6 December 2004.

[13] Matt Bai, "Who Lost Ohio?," *New York Times Magazine*, 21 November 2004, 66–74.

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that the number of people who vote for president should be the turnout numerator. There is disagreement, however, about the appropriate denominator. The U.S. Bureau of the Census reports turnout based upon the voting age population.[14] Alternative calculations by Walter Dean Burnham use the number of eligible citizens,[15] whereas Michael P. McDonald and Samuel L. Popkin use what they call the voting-eligible population.[16] In 2000, turnout was 51.2 percent with the voting age population as a base, 53.9 percent based upon Burnham's calculations, and 55.6 percent according to McDonald and Popkin. Any claim that turnout surged must compare the 2004 results with a comparable baseline. According to McDonald, the voting age population in 2004 was 221,285,099 and the voting-eligible population was 203,864,860. He estimates that there were 122,284,728 votes for president.[17] On the basis of these results, turnout among the voting age population was 55.3 percent. The final turnout percentage may have been slightly higher, but turnout was clearly substantially lower than the 62.8 percent attained in 1960.

Multivariate analyses will be needed to determine the extent to which the Republicans won the ground war by successfully mobilizing their supporters, and such analyses must await definitive turnout figures for each state. But we found no relationship between state-by-state increases in turnout and Bush's gains in the major-party vote.[18] (The correlation is −.10.) Moreover, it does not appear that the presence of a referendum to constitutionally ban same-sex marriages contributed substantially to increased turnout in the eleven states in which such a measure appeared. According to our calculations, the average increase in turnout in these states was just over one point higher than in the thirty-nine states where no such measure was on the ballot. But in Ohio, where the gay marriage ban passed by over a three-to-two margin, turnout increased nine percentage points. On the other hand, Ohio was perhaps the most closely contested state in the union, and, as we have seen above, there were massive get-out-the-vote efforts for both candidates.

Demographic Groups

The 2004 exit poll, based upon 13,660 voters and conducted by Media Research/Mitofsky International, provides valuable information about the demo-

[14] For example, see U.S. Department of Commerce, U.S. Bureau of the Census, *Projections of the Population of Voting Age, for States, by Race, Hispanic Origin, Sex and Selected Ages, November 7, 2000*, Table 1, accessed at landview.census.gov/population/www.socdemo/voting/tabs00, 5 July 2001.

[15] Walter Dean Burnham, "The Turnout Problem" in A. James Reichley, ed., *Elections: American Style* (Washington, DC: The Brookings Institution, 1987).

[16] Michael P. McDonald and Samuel L. Popkin, "The Myth of the Vanishing Voter," *American Political Science Review* 95 (December 2001): 963–974.

[17] We are grateful to Professor McDonald for providing us with these results. These vote totals are for 19 December 2004.

[18] Results for the 2000 election, as well as turnout based upon the voting age population are from Richard M. Scammon, Alice V. McGillivray, and Rhodes Cook, *America Votes 24: A Handbook of Contemporary American Election Statistics* (Washington, DC: Congressional Quarterly Press, 2001), 1, 9.

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graphic correlates of voting choice, although we must rely only upon published reports based upon this survey.[19] These results are presented in Table 2.[20] They reveal that blacks remain solidly Democratic, although pundits have pointed to Bush's slight gain compared with 2000.[21] On the other hand, Democratic losses among Hispanics and Latinos appear to be consequential. According to CNN, Latino support for Bush increased nine points between 2000 and 2004; according to the *New York Times*, his support among Hispanics increased twelve points, although there continues to be debate about the magnitude of Bush's gain.[22]

As Table 2 shows, there was a gender gap, with just over half of women voters supporting Kerry, whereas men preferred Bush by an eleven-point margin over Kerry. Between 2000 and 2004, Democratic voting among women fell slightly, while Republican support rose by five percentage points. Ever since Reagan became president, many Democrats have hoped to win by gaining support among women. But as we pointed out over two decades ago, a gender gap does not necessarily help the Democrats.[23] The gender gap in 2004 (seven points) benefited Bush. As our table shows, the gender gap was essentially the same among blacks and among whites. As in past elections, there was a clear tendency for unmarried voters to be more likely to support the Democratic candidate than married voters, and, according to our estimates, 60 percent of unmarried women voted for Kerry.[24] As Table 2 shows, sexual preferences are strongly related to the vote. Among respondents who answered yes to the question, "Are you gay, lesbian, or bisexual," a substantial majority voted for Kerry.

Age differences were small, although the Democrats may find it encouraging that they fared best among younger voters (results not shown). But attempts to win by mobilizing younger voters failed, partly because young voters were not heavily Democratic and partly because young voters made up the same 17 percent of the voters in 2000 that they did in 2004. Likewise, educational differences were fairly small (not shown), with Kerry faring best among voters with some postgraduate education. On the other hand, income was strongly related to vote preference (not shown). Although reported income categories are not comparable across time, 2004 (not shown) appears to represent

[19] A description of this poll and the sources we use are found in Table 2.

[20] Not all the results discussed in this section are presented in Table 2.

[21] The 2000 survey was conducted by the Voter News Services and is based upon 13,279 voters leaving 200 polling places on election day. See Marjorie Connelly, "Who Voted: A Portrait of American Politics, 1976–2000," *New York Times*, 12 November 2000.

[22] See Darryl Fears, "Pollsters Debate Hispanics' Presidential Voting," 27 November 2004. Accessed at www.washingtonpost.com, 27 November 2004.

[23] Paul R. Abramson, John H. Aldrich, and David W. Rohde, *Change and Continuity in the 1980 Elections*, revised edition (Washington, DC: Congressional Quarterly Press, 1983), 290.

[24] A poll of 5,154 voters conducted by the *Los Angeles Times* found that among the approximately 980 single women, 64 percent voted for Kerry. The poll is based on voters sampled at 136 voting places throughout the nation, including fifty polling places in California. About two-thirds of these voters (3,357) came from California. See Rebecca Perry, "Times National Exit Poll Results," *Los Angeles Times*, accessed at www.latimes.com, 5 November 2004.

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a higher level of income-based polarization than any previous exit poll (1992, 1996, and 2000) for which relatively comparable family income data are available. Likewise, union membership was strongly related to voter choice, with a fifteen-point gap separating members of union households from voters who were not members of union households. Exit polls suggest that this is comparable to differences between union members and nonmembers in elections between 1984 and 2000.

The very small difference between Catholics and Protestants is remarkable, especially when one considers that the Democrats were fielding a Catholic presidential candidate for only the third time. In 1960, John F. Kennedy won 80 percent of the Catholic vote when he ran against Richard M. Nixon.[25] In that year, the Roman Catholic hierarchy attempted to distance itself from the election. In 2004, however, some bishops warned their parishioners not to vote for candidates who supported abortion rights, and some proclaimed that Catholic politicians with unacceptable views on abortion should not receive communion in their dioceses. As Table 2 shows, a majority of Catholics voted for Bush, with a mere seven-point difference between Catholics and Protestants, although these differences rise to eleven points among whites. In Ohio, Bush won 55 percent of the total Catholic vote and he won 57 percent in Florida, and in both states, there was only a negligible tendency for Protestants to vote more Republican than Catholics. Despite Bush's strongly pro-Israeli policies, Jews were only five points less Democratic than in 2000.

Table 2 indicates that church attendance was strongly related to the vote, with just over a third of the voters who never go to church voting for Bush, whereas among those who go to church more than once a week, nearly two out of three did. As Morris P. Fiorina and his colleagues have pointed out, the National Election Study survey data suggest that the relationship between church attendance and the tendency to vote Republican grew between 1960 and 1996.[26] However, the relationship between attending church and the tendency to vote Republican was the same in 2004 and 2000. Among white Protestant evangelicals or those who said they were "born again," over three out of four voted for Bush; according to our estimates, white Protestants who were not in these categories gave Bush just over half of their vote.

Two other categories should be mentioned. Nearly three-fifths of the voters who served in the U.S. military voted for Bush, whereas Bush and Kerry split the vote among Americans with no military service; this difference, however, may partly reflect that men are more likely to have served than women. Finally, Bush did substantially better in households in which someone owned a gun than in households where no one owned one. The twenty-point gap between voters in gun-owning households and those without guns was essentially the same as the twenty-two-point difference in 2000.

[25] Philip E. Converse, Angus Campbell, Warren E. Miller, and Donald E. Stokes, "Stability and Change in 1960: A Reinstating Election," *American Political Science Review* 55 (June 1961): 269–280.

[26] Morris P. Fiorina, with Samuel J. Abrams and Jeremy C. Pope, *Culture War? The Myth of a Polarized America* (New York: Pearson/Longman, 2005), 69.

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TABLE 2

How Social Groups Voted for President, 2004 (Percentage)

Presidential Vote	*Percent of Total*	*Bush*	*Kerry*	*Nader*	*Total Percent*	*Approximate Number*
Total electorate	100	51	48	0	99	13,660
Race						
Black	11	11	88	0	99	1,500
White	77	58	41	0	99	10,520
Hispanic/Latino	8	44	53	2	99	1,090
Asian	2	44	56	*	100	270
Other	2	40	54	2	96	270
Sex						
Female	54	48	51	0	99	7,380
Male	46	55	44	0	99	6,280
Race and sex						
Non-white female	12	24	75	1	100	1,640
Non-white male	10	30	67	1	98	1,370
White female	41	55	44	0	99	5,600
White male	36	62	37	0	99	4,920
Marital status						
Unmarried	37	40	58	0	98	5,050
Married	63	57	42	0	99	8,610
Sexual preference***						
Gay, lesbian, or bisexual	4	23	77	0	100	270
Not in these categories	96	53	46	0	99	6,560
Union membership***						
Member of a union household	24	40	59	1	100	2,460
Not a member	76	55	44	0	99	7,790
Religion among all voters***						
Jewish	3	25	74	*	99	310
Catholic	27	52	47	0	99	2,770
Protestant/other Christian	54	59	40	0	99	5,530
Other	7	23	74	1	98	720
None	10	31	67	1	99	1,020

Continued

These demographic data reveal that Kerry carried some, but not all, of the groups that supported the "New Deal coalition." He still won overwhelming support among blacks, solid support among Jews, and a clear majority among union households. However, he failed to gain a majority of the Catholic vote. Hispanics are too new on the national political scene to have been part of the New Deal coalition, but Democrats had been winning solid support among this growing group, with the exception of Cuban-Americans in Florida. But in 2004, they suffered erosion in Hispanic support. With the exception of blacks, no group gave Kerry overwhelming support. And for a Catholic to fail to win majority support among Catholics was an obstacle Kerry was unable to overcome.

Evaluations by the Electorate

Although Bush's victory can be attributed to Kerry's failure to win over the demographic groups necessary to secure victory, we must also view the elector-

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TABLE 2

Continued

Presidential Vote	*Percent of Total*	*Bush*	*Kerry*	*Nader*	*Total Percent*	*Approximate Number*
Religion among whites***						
Catholic	20	56	43	0	99	2,050
Protestant/other Christian	41	67	32	0	99	4,200
Church attendance***						
Never	15	36	62	1	99	1,540
A few times a year	28	45	54	0	99	2,870
A few times a month	14	50	49	*	99	1,430
Once a week	26	58	41	0	99	2,660
More than once a week	16	64	35	1	100	1,640
Type of Protestant among whites***						
Not evangelical or born-again**	18	54	46	0	99	1,840
Evangelical or born-again	23	78	21	0	99	2,360
Military service***						
Did not serve	82	49	50	0	99	5,600
Served in U.S. military	18	57	41	0	98	1,230
Gun ownership***						
No one in household owns a gun	59	43	57	0	100	2,010
Someone in household owns a gun	41	63	36	1	100	1,400

Source: This poll was conducted by Edison Media Research/Mitofsky International and is based upon questionnaires completed by 13,110 voters as they left 250 polling places throughout the United States on election day and 500 telephone polls with early voters. It was sponsored by a combined consortium of newspapers and television networks. The results we report in our article come from three sources: Marjorie Connelly, "Election 2004 How America Voted," *New York Times*, 7 November, 2004, WK4; MSNBC, "Decision 2004," accessed at http://www.msnbc.com/id/5297138/, 10 November 2004; and CNN.com, "Election Results," accessed at http://www.cnn.com/ELECTION/2004/pages/results/state, 11 November 2004. Four questionnaire formats were used.

* Represents a statistically insignificant number of respondents.

** Our estimate.

*** Not asked in all questionnaire formats.

ate's evaluation of the national conditions, candidates, parties, and issues. Many of these views are called retrospective evaluations, and a large number of questions measuring these types of evaluations were included in the national exit poll.[27] The interpretation of an election generally rests on an understanding of the effect of parties, issues, and candidates. We find it helpful to contrast this election as one between an incumbent and a challenger, often relying on retrospective and related evaluations, as compared to one that divides the electorate into "red" and "blue" states, often thereby reflecting partisan and ideological distinctions.

Incumbent-centered Evaluations

Media discussions of "red states" and "blue states" are based on a view of political competition that is partisan and/or ideologically centered. That is, "blue"

[27] The most important theoretical discussion remains Morris P. Fiorina, *Retrospective Voting in American National Elections* (New Haven: Yale University Press, 1981).

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TABLE 3

How Voted for President, 2004, by Views of the Candidates, Parties, and Issues (Percentage)

Presidential Vote	*Percent of Total*	*Bush*	*Kerry*	*Nader*	*Total Percent*	*Approximate Number*
Presidential approval*						
Disapprove	46	6	93	0	99	3,140
Approve	53	90	9	0	99	3,620
Whether country is headed in right direction*						
Seriously off on the wrong track	46	12	86	0	98	1,570
Generally going in the right direction	49	89	10	0	99	1,670
Family's financial situation compared with four years ago*						
Worse today	28	20	79	0	99	1,910
About the same	39	49	50	1	100	2,660
Better today	32	80	19	0	99	2,190
National economy*						
Poor	17	6	92	0	98	580
Not so good	35	26	72	1	99	1,200
Good	43	87	13	0	100	1,470
Excellent	4	89	11	0	100	140
Trust Kerry to handle the economy*						
Yes	45	12	88	0	100	1,540
No	53	86	12	1	99	1,810
Trust Bush to handle the economy*						
Yes	49	93	7	0	100	1,670
No	51	12	86	1	99	1,740
Trust Kerry to handle terrorism*						
Yes	40	6	93	0	99	1,370
No	58	84	15	1	100	1,980
Trust Bush to handle terrorism*						
Yes	58	85	14	0	99	1,980
No	40	4	94	0	98	1,370

Continued

denotes Democratic states, which are typically understood to be liberal in ideological orientation, whereas "red" denotes Republican and conservative. Many electoral forces are well understood from this perspective. Others, however, are best viewed as tapping divisions between the incumbent and the challenger. Thus, for example, the ubiquitous "presidential approval" scores summarize evaluations of how well or poorly the incumbent is seen as having handled his job as president. And underlying such global assessments are evaluations of the performance of the current incumbent over the last four years (retrospective evaluations) and comparisons of expected incumbent and challenger performances on the economy and handling of war or peace over the next four years (prospective evaluations).

Scholars have developed a number of models designed to forecast the presidential election outcome, based on data available before the campaign itself actually begins (that is, based on data from the summer of the election year or

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TABLE 3

Continued

Presidential Vote	*Percent of Total*	*Bush*	*Kerry*	*Nader*	*Total Percent*	*Approximate Number*
Decision to go to war with Iraq*						
Disapprove	45	12	87	0	99	3,070
Approve	51	85	14	0	99	3,480
View of war in Iraq and terrorism*						
Separate from the war on terrorism	42	11	88	1	100	1,430
Part of the war on terrorism	55	81	18	0	99	1,880
Party identification						
Democrat	37	11	89	0	100	5,050
Independent/other	26	48	49	1	98	3,550
Republican	37	93	6	0	99	5,050
Ideology						
Liberal	21	13	85	1	99	2,870
Moderate	45	45	54	0	99	6,150
Conservative	34	84	15	0	99	4,640
Position on abortion*						
Should be legal in all cases	21	25	73	1	99	720
Should be legal in most cases	34	38	61	0	99	1,660
Should be illegal in most cases	26	73	26	0	99	890
Should be illegal in all cases	16	77	22	0	99	550
View of gay and lesbian couples*						
Should be allowed to legally marry	25	22	77	1	100	850
Should be allowed to legally form civil unions, but not marry	35	52	47	0	99	1,200
There should be no legal recognition of these relationships	37	70	29	0	99	1,260

Source: See Table 2.

* Not asked in all four questionnaire formats.

earlier). All of these models employ some indication of the state of the economy, and many include some form of presidential approval early in the election year (and possibly other such variables), and are thus incumbent-versus-challenger–based forecasts. In October 2004, James E. Campbell presented the forecasts for the 2004 election from seven such models.[28] He reported that the median prediction was for a two-party vote percentage of 53.8 for Bush, about three points higher than the actual result. Such forecasts, then, were quite close to, even if overstating a bit, Bush's expected support, suggesting that these incumbent-versus-challenger–oriented measures can take us a long way toward understanding the outcome, based on circumstances found before the general election campaign formally began.

The exit poll data in Table 3 suggest that the forecast models' accuracy is no accident. Fifty-three percent of voters reported approval of Bush's perfor-

[28] See James E. Campbell, "Introduction—The 2004 Presidential Election Forecasts," *PS: Political Science and Politics*, 37 (October 2004): 733–735. The forecasts are listed on p. 734. These also may be found at http://www.apsanet.org/ps/oct04/toc.cfm.

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mance, putting his ratings at a point where election is likely (unsurprisingly, 50 percent approval is the usual breaking point), and Bush won nine of ten votes of approvers, while Kerry won even greater support from the 46 percent who disapproved. This summary evaluation has been strongly related to the vote in every election in which such measures have been employed, although the relationship was, if anything, stronger than usual in 2004. In 2000, for example, Clinton's approval ratings were higher (57 percent approval, 41 percent disapproval), but Gore received only 77 percent of the votes of approvers (and Bush 20 percent), while Bush got 88 percent of the votes of disapprovers and Gore only 9 percent.

Another very general assessment related to incumbent performance is whether the voter thinks that America is going in the right direction (49 percent) or wrong direction (46 percent). Responses to this question were also strongly related to the vote, with those thinking the United States was going in the right direction very likely to support Bush and those thinking it was going in the wrong direction very likely to support Kerry.

The public's retrospective assessments of the state of the economy were strongly related to the vote in 2004. This included an unusually high level of apparent "pocketbook" voting (that is, voting in accord with one's view of "you and your family's" financial circumstances), a finding that is consistent with the unusually strong relationship between income and the vote, discussed above. In the exit poll, consistent with the strengthening of the economy overall, slightly more thought their economic circumstances had improved (32 percent) than declined (28 percent) and in each case, four out of five apparently "voted their pocketbook," whereas the 40 percent who thought it unchanged split their vote evenly. In 2000, 50 percent thought their own circumstances were better than in 1999, and only 11 percent thought they had worsened. However, Gore received only 61 percent of the vote of those who thought their family better off, while Bush received 61 percent from those who thought it the same and from those who thought it worse off. Thus, voting consistent with one's own recent economic fortunes was high in 2004, whereas it was somewhat weaker in 2000.

Often, voters appear to be more influenced by their evaluations of the state of the national economy. In 2004, 47 percent thought the national economy was good or excellent and seven out of eight of these gave their vote to the incumbent president. The 52 percent who said it was either not good or poor gave eight out of ten of their votes to the challenger. Had Kerry been able to hold the level of support among the less-positive evaluators that Bush did among the more-positive, he would have won the election. This slight asymmetry resulted from two factors: first, voters were somewhat more likely to think that Bush could be trusted to handle the economy; and, second, Bush won three out of five votes among the 8 percent of the voters who said that both Bush and Kerry could be trusted to handle the economy (results not shown).

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"Pocketbook voting" was only marginally less impressive in 2000 than in 2004, but voting on the basis of assessments of the national economy was uncharacteristically weak in 2000, rebounding in 2004 to its usual role as an important component of choice.

Both approval ratings of the performance of the president and evaluations of the state of the economy are always important. Evaluations of war and peace are also evaluations framed in terms of the incumbent versus the challenger, but differ from economic evaluations in that they vary greatly from election to election. This election was, of course, one in which war was a major concern. A slight majority approved of Bush's decision to go to war in Iraq (51 percent, compared to 45 percent disapproving). And, as with the economy, approval of this decision was closely related to the vote: 85 percent of those who approved voted for the president who made that decision; 87 percent of those who disapproved voted for his challenger. In this case, however, prospective evaluations more clearly favored Bush: 58 percent of voters thought they could trust Bush to handle terrorism, and only 40 percent did not, whereas the figures were exactly reversed for Kerry. Bush held about 85 percent support among those who trusted him or distrusted his challenger on this issue, whereas comparable figures for those who trusted Kerry were 93 percent and 94 percent among those who distrusted Bush.

Partisan and Ideological Divides

The obvious starting point for looking at electoral factors that tend to divide people into partisan and ideological camps of the red–blue sort is to look at party identification[29] and at ideology. Fiorina considers party identification to be a summary measure of retrospective evaluations,[30] although Donald Green and his colleagues maintain that partisanship is best conceptualized as a form of group identification.[31] The exit poll of voters in 2004 yielded an exact balance of 37 percent each for the two parties, with 26 percent reporting independence.[32] Essentially nine out of ten voted consistently with their partisanship (although Bush did hold more Republicans than Kerry did Democrats, which, of course, could have made a great deal of difference in this very close election), whereas independents were evenly divided. There were more self-reported conservatives (34 percent) than liberals (21 percent) but, as usual, even more claimed to be moderates (45 percent). Ideology, as usual, was somewhat less

[29] The question used in 2004 was, "No matter how you voted today, do you usually think of yourself as a Democrat, Republican, Independent, [or] [s]omething else?"

[30] Fiorina, *Retrospective Voting*, 84–105.

[31] Donald Green, Bradley Palmquist, and Eric Schickler, *Partisan Hearts and Minds: Political Parties and the Social Identities of Voters* (New Haven, CT: Yale University Press, 2002).

[32] Because this was an exit poll, we can infer that there was an even balance between the two parties among Americans who voted on election day, but we cannot infer that the two parties are evenly balanced in the full electorate.

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strongly related to the vote than was partisanship, but seven out of eight voted consistently with their ideology. Moderates, however, modestly favored Kerry (54 to 45 percent). In both cases, these patterns were very similar to 2000, although in the Gore–Bush contest, there were a few more Democratic than Republican voters (39 percent to 35 percent, with 27 percent independent).

Social Issues

Unfortunately, the exit poll tapped few issues that are ordinarily understood best as partisan/ideological (undoubtedly due to the obvious need to ask about Iraq and the war on terrorism).[33] But it did measure two divisive social issues, abortion and gay marriage. Fiorina and his colleagues have argued that the public division over abortion is greatly exaggerated and that even differences between self-identified Democrats, independents, and Republicans are fairly small.[34] But views on abortion are strongly related to presidential voting.[35] In 2004, there were clear differences between the two candidates. Kerry was clearly more pro-choice than Bush, promising not to appoint anyone to the Supreme Court who would overturn *Roe v. Wade.* Although Bush said that he would not have a litmus test for any court appointment, his pro-life views were far more difficult to conceal as President than they had been as a presidential candidate in 2000. As the data in Table 3 show, Kerry received nearly three out of four votes from those who thought abortion should be legal in all cases, while Bush received over three out of four votes from those who thought it should be illegal in all cases. Moreover, these differences are slightly greater than they were in the Bush–Gore contest.

Many observers thought that the issue of gay marriage, new to presidential politics in 2004, would become another critical social issue. Both candidates opposed legalizing same-sex marriages, and both supported the right of gays and lesbians to form civil unions. But Bush proposed an amendment to the U.S. Constitution that would make marriage between same-sex couples unconstitutional, whereas Kerry argued that such an amendment was both unnecessary and undesirable. Their positions on this issue clearly signaled that Bush was less sympathetic toward gay rights than Kerry. As Table 3 shows, one out of four Americans thought that gay and lesbian couples should be allowed to legally

[33] We do not discuss the question asking, "Which one issue mattered most in deciding how you voted for president?" It has been widely noted that 22 percent of the voters chose "moral values" and that 80 percent of the voters choosing this option voted for Bush. As Gary Langer has argued, there are solid reasons to be skeptical about these results, especially when pre-election polls determined that the three most important issues were Iraq, the economy, and terrorism. Langer argues that "moral values" is a "grab bag" that does not belong with the remaining list of specific issues. See Gary Langer, "A Question of Values," *New York Times*, 6 November 2004. See also Jim Rutenberg, "Poll Question Stirs Debate on Meaning of 'Values,'" *New York Times*, 6 November 2004.

[34] See Fiorina, Abrams, and Pope, *Culture War?*, 42.

[35] For evidence on the 1992, 1996, and 2000 elections, see Abramson, Aldrich, and Rohde, *Change and Continuity*, 144–146.

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marry, and three-fourths of these voters supported Kerry. More than a third thought that gays should have no legal recognition of their relationships, and Bush won seven out of ten of their votes. Among the third who took the position that gays should be allowed to legally form civil unions (the actual position of both candidates), Bush edged out Kerry by five percentage points.

One might ask whether the issue nature of the electorate was more incumbent/challenger focused or more focused on partisan and ideological divisions. Although we cannot offer a definitive answer from these data, we can say that it appears to have been at least somewhat more focused on retrospective evaluations of performance in office and prospective judgments of who would perform better over the next four years than it was focused on divisions over partisan, ideological, red state–blue state factors. However, it should also be emphasized that the evidence suggests that there was a considerable extent of both types of issue-related voting.

Voter Responses to the "Air War"

The candidates' campaign speeches and television ads, referred to above as the "air war," can be seen as the candidates seeking to frame voters' choices along lines favorable to their respective candidacies.[36] In 2004, the air war primarily focused on the war in Iraq, terrorism, and the economy. Of course, as discussed above, the candidates argued for different framing of these two issues, but they spent much of their time speaking about these two concerns. To be sure, they did speak about other matters, but much less often and much more irregularly. These other concerns were left to the ground war or to surrogates campaigning on their behalf.

The success of such efforts may be assessed by the data used in Figure 3. These results are based upon national samples conducted throughout the election year that asked respondents whether foreign policy, economic, or social issues were the most important to them in deciding how to vote.[37] As these data indicate, the electorate began with a very strong focus on the economy. By the end of the campaign, the importance of the economy had declined, although it remained the most important concern to nearly three in five voters. Conversely, the importance of foreign policy doubled over the course of the campaign, rising from the most important issue for one in seven to about three in ten. Social issues were a major concern for no more than one in nine respondents.

This pattern is at least consistent with the view of the electorate described above. The economic basis was strongly related to the vote in 2004, as it often is. The data we have do not allow us to make strong claims, but they are consis-

[36] John H. Aldrich and John D. Griffin, "The Presidency and the Campaign: Creating Voter Priorities in the 2000 Election" in Michael Nelson, ed., *The Presidency and the Political System*, 7th edition (Washington, DC: Congressional Quarterly Press, 2003).

[37] We would like to thank Peter Feaver, Christopher Gelpi, and Jason Reifler for sharing these data with us.

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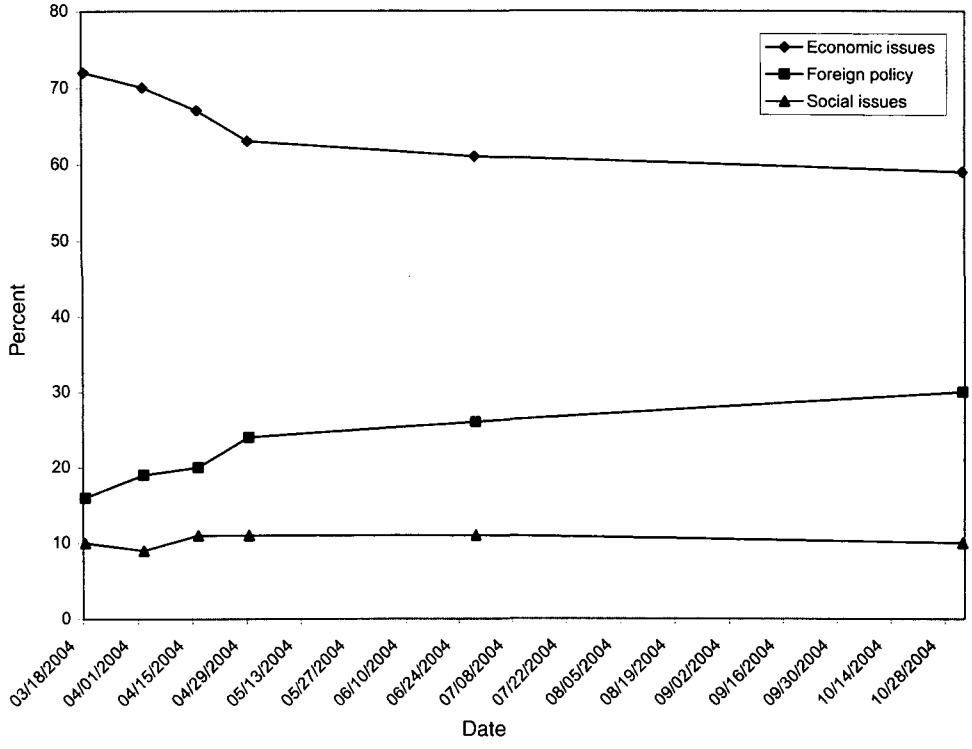
FIGURE 3
Public Assessments of the Importance of Foreign Policy, Economic, and Social Issues over the 2004 Presidential Election Campaign



Source: Surveys conducted by Knowledge Networks for Peter Feaver, Christopher Gelpi, and Jason Reifler.
Total Ns are 930, 889, 881, 899, 900, and 1,125, respectively.

tent with the conclusion that this election might have turned as much on the economy as on any other policy-related factor. In this case, the weakness of the economy as the election year began gave room for Democratic candidates to focus considerable attention on the Bush administration's performance, but the improving economy also gave him a credible response. Similarly, the heavy focus of the "air war" on the Iraq conflict was reflected in the concerns of the electorate. Again, not only was this an incumbent–challenger evaluation, but it was also the case that both challenger and incumbent had a credible basis for choosing to focus their attention on it. To the extent that Bush could get the electorate to see Iraq as a part of the war on terror, it appears that voters supported him. To the extent that voters agreed with Kerry that Iraq was separate from the war on terror, they were likely to support the challenger.

Table 3 shows that many voters held to each of these positions, but Bush's claim that Iraq was a part of the war on terrorism was agreed to by 55 percent, with 42 percent saying that Iraq was separate from the war on terrorism. Of

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course, it is not clear what the direction of causality was. It is possible that some voters were influenced by their views about terrorism and that some were influenced by their support for Bush. As an on-line survey conducted in September and October of 2004 by the Program on International Policy Attitudes at the University of Maryland revealed, Bush and Kerry supporters had dramatically different views on the facts about U.S. foreign policy, including strikingly different views about Saddam Hussein's connection to al Qaeda.[38]

Conclusions and Consequences

The most immediate consequences of the 2004 elections relate to their potential effects on governance in the next two years. One issue is whether President Bush has received a mandate from the electorate for the policies he argued for in the campaign. Obviously, it is in the interest of every winning candidate to claim a mandate in order to increase the chances that his initiatives will be adopted. It is also clear that mandates are interpreted events—whether they exist is not a matter of meeting some clear standard, but, rather, a function of whether the media and other observers say they exist. To Bush's advantage, the day after the voting, a number of media outlets discussed the White House's claim of a Bush mandate, a claim enhanced by the GOP gains in Congress. If, however, a mandate indicates that the public endorses the president's policy positions, there is plenty of evidence that 2004 provided no mandate.

For example, a *Los Angeles Times* poll released on 25 October asked respondents if they thought the country was "better off because of George W. Bush's policies and should proceed in the direction he set out, or . . . not better off and [needed] to move in a new direction." Forty-three percent chose the first option, and 55 percent chose the second.[39] Similarly, after the election, Gallup offered respondents two choices: "Because the election was so close, Bush should emphasize programs that both parties support," or "Because he won a majority of the votes, George W. Bush has a mandate to advance the Republican Party's agenda." Sixty-three percent selected the former statement while only 29 percent agreed with the latter.[40] Indeed, Lyn Nofziger, a former Reagan staffer, wrote: "The president and his people are deluding themselves if they think his victory signified general approval of his record, even within the Republican Party."[41]

Mandate or not, Bush is president for four more years, and will have the right to exercise presidential powers to secure his policy priorities. The election results have implications for that effort too. The additional seats won by the GOP in Congress will surely be an asset, especially in the Senate, but neither

[38] Steven Kull, *The Separate Realities of Bush and Kerry Supporters* (Program on International Policy Attitudes, University of Maryland, 21 October 2004).

[39] Poll data accessed at www.latimes.com, 25 October 2004.

[40] *USA Today*, 23 November 2004.

[41] Lyn Nofziger, "Bush's Trouble Ahead," *New York Times*, 7 November 2004.

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that nor this president's majority win guarantees smooth sailing, or even congressional support. Bush's problems securing House agreement to the Intelligence Reform Bill in the 108th Congress's lame duck session is an early warning of potential problems ahead. Victory did not bring an end to political division. Post-election Gallup polls show that the partisan difference regarding Bush's approval ratings (seventy-six points) was the greatest for any second-term president between 1956 and 2004.[42] Moreover, the congressional elections continued another trend: the further decline in the number of moderates in Congress and, thus, the further polarization of the membership of both chambers.[43] This political polarization in the public and in the Congress will continue to offer challenges to the President's efforts to advance his agenda and, thus, to his party's ability to build a record of success for the future.

Another related potential problem stems from tensions within the Republican Party. As we noted earlier, Bush took actions during his first term that were designed to appeal to the Christian right, and conservative Christians responded with strong efforts in the campaign and with voting support. Now those supporters expect results to flow from their victory. The GOP may have a difficult task in choosing policy positions that will alienate neither their religious conservative base nor the moderate voters who will hold the balance of power in future elections.

The longer-range implications of the 2004 contests relate to future elections. In the wake of the presidential and congressional losses, many pundits and Democratic activists have engaged in public hand-wringing about the future of the Democratic Party. Newspaper headlines have reflected the party's allegedly dire straits and uncertain future.

To be sure, winning is better than losing, and Democratic strategists should surely reflect on their choices—both of candidates and of tactics—in order to increase their chances of future success. However, from our vantage point, it is difficult to see the Democrats' situation to be as dismal as many others do. Their party has won two of the last four presidential races, measured by electoral votes, and they won the popular vote in three of the last four. Even viewing 2004 by itself, one must recall that George Bush was an incumbent president in the middle of an ongoing war with an improving economy and in the first contest after the terrorist attacks of September 11. What is more surprising—that he won reelection or that his opponent came as close as he did? Many analysts (and Republican strategists) have noted that George W. Bush received the greatest number of votes for president in the history of the United States—certainly a remarkable achievement. What few have recognized is that John Kerry got the second largest number of votes in history, over 4.5 million more votes than Ronald Reagan got in his historic 1984 landslide.

[42] Gary Jacobson compiled the data supporting these statements from the first Gallup poll after the election of every second-term president from Dwight D. Eisenhower through George W. Bush. We are grateful to Professor Jacobson for sharing the data with us and for his permission to cite them.

[43] See Richard Fleisher and Jon R. Bond, "The Shrinking Middle in the U.S Congress," *British Journal of Political Science* 34 (July 2004): 429–451.

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Many analysts, especially moderate Democrats, have particularly focused on the further Democratic decline in southern congressional seats and on the fact that Kerry lost every southern state, as Gore did four years earlier. Some argue that Clinton's successes and Kerry's loss demonstrate that it was a mistake for the party to nominate a northeastern liberal. On the other hand, it is worth noting that Clinton would have won both times without carrying a single southern state. Similarly, if Gore had carried New Hampshire or if Kerry had won Ohio, they would have triumphed in the electoral college, again without a single southern state. Perhaps the Democrats would benefit by nominating a southern candidate, but a strong candidate from any region could win.

Perhaps even more to the point is that these hypotheticals are based on past circumstances and the political terrain of the future is very likely to be different. If, in the wake of the Democratic defeat of 1988, we had suggested that only twelve years later the pivotal state that would provide the 270th electoral vote would be Florida, observers would probably have questioned our competence or our sanity. Yet Florida, which was the second most Republican southern state in 1952, had become the most Democratic southern state and an almost exact match for the national vote division in 2000. Surely the Democrats would like to become more competitive in the South (and this is occurring in some places), but an alternative is to make up the lost ground elsewhere.

We are not arguing here that a Democratic resurgence is inevitable, or even likely. In the future, we may look back at 2004 as the beginning of the establishment of the GOP as a long-term majority party. We would argue, however, that such a future is not yet visible, and that a national party that runs a close second in two consecutive presidential elections does not necessarily have to completely alter its image or its approach, although it might profit from better candidates or different strategies.

Of course, the Republicans do have unified control of the government. The public may not have given them a mandate, but the President and Republicans in Congress are seeking to expend their newly found political capital to shape public policy. Perhaps because Kerry and Bush held similar positions about future actions in Iraq and on the war on terrorism, there seems to be little discussion of new initiatives in foreign policy. But Bush has begun to spend his capital on the domestic side, starting with raising attention to his proposal to create private investment plans as part of the Social Security system. He has also proposed drawing attention to possible dramatic tax reforms and possibly to the environment. We cannot know whether Republican policies during the next four years will put the 2008 GOP presidential nominee in a strong position. Our best guess, however, is that 2008 will be a hotly contested campaign, with two strong parties nominating contenders with good chances of victory—and of defeat.

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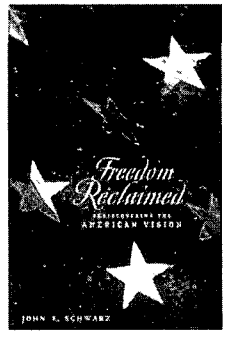

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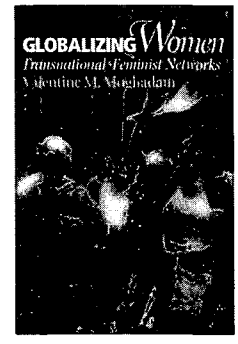

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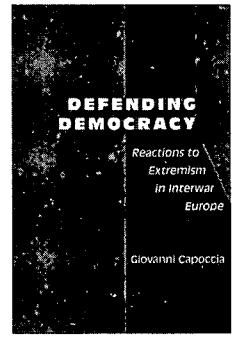

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The Implications of Leadership Change in the Arab World

DANIEL L. BYMAN

The politics of the Middle East may be more dependent on the ambitions and whims of individual leaders than in any other region of the world. Middle Eastern leaders are often unconstrained by domestic political institutions or popular sentiment: their ambitions and preferences, as well as their weaknesses and foibles, can make the difference between war and peace, revolution and stability. Leadership change in the Middle East, however, is infrequent and seldom routinized. The region often seems frozen in time, with certain leaders—Muammar-el-Qaddafi of Libya, Yasir Arafat in the Palestinian Authority, and Hosni Mubarak of Egypt, among others—ruling for decades. As Glenn Robinson remarks, "If anything, the contemporary Arab world has been marked by too much political stability at the top, not too little."[1]

Table 1 suggests that a thaw is occurring. Although many Arab leaders came to power in the 1970s or 1980s, the last several years have seen remarkable change. In 1997, President Mohammad Khatami won the Iranian election, campaigning to reform the revolutionary system. In 1999, new leaders came to power in Algeria, Bahrain, Jordan, and Morocco, and in 2000, one of the most enduring leaders in the world, Syria's Hafez al-Assad, passed away. In 2004, Yasir Arafat passed away after over three decades at the helm of Palestinian politics.

[1] Glenn E. Robinson, "Palestine After Arafat," *The Washington Quarterly* 23 (Autumn 2000): 77.

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TABLE 1

Heads of State of Selected Middle Eastern Countries

Country	Head of State	Year Born	Year Came to Power (formal ascension)
Algeria	President Abdelaziz Bouteflika	1937	1999
Bahrain	Amir Hamad bin Isa Al Khalifa	1949	1999
Egypt	President Mohammad Hosni Mubarak	1928	1981
Iran	President Mohammad Khatami	1943	1997
Jordan	King Abdullah II	1962	1999
Kuwait	Amir Jabir al-Ahmad al-Jabir al-Sabah	1926	1977
Libya	Col Muammar Abu Minyar al-Qadhafi	1942	1969
Morocco	King Muhammad VI	1963	1999
Oman	Sultan Qaboos bin Said Al-Said	1940	1970
Palestinian National Authority	President Mahmoud Abbas	1936	2005
Qatar	Amir Hamad bin Khalifa Al-Thani	1950	1995
Saudi Arabia	King Fahd bin Abd al-Aziz Al-Saud	1923	1982
Syria	President Bashar al-Assad	1966	2000
United Arab Emirates	President Khalifa bin Zayid al-Nuhayyan	1948	2004

Source: Chiefs of State and Cabinet Members of Foreign Governments. Central Intelligence Agency, http://www.cia.gov/cia/publications/chiefs/index.html, accessed on April 3, 2001, and updated to reflect changes in 2004. When this report went to press, the leadership of Iraq had not yet been selected.

This article first examines how to conceptualize the issue of regime change.[2] It then assesses the implications of regime change in Saudi Arabia, Syria, and Egypt. These countries were chosen because of their importance in the region and to the United States. Syria represents a regime hostile to U.S. interests in a key region of the Middle East. Egypt and Saudi Arabia, on the other hand, are perhaps the most important partners Washington has in the region.[3]

For each case, this article attempts to discern which policies stem from geopolitical concerns and are, thus, likely to be shared by most conceivable regimes and which policies are due to particular types of regimes (e.g., Islamist versus military). In addition, it attempts to note the particular strengths and weak-

[2] This article examines regime change that occurs for natural causes (through the death of a leader) or through some process of internal political change (through a coup or assassination, for example). It does not examine cases of regime change that occur through external coercive military force, as was the case in Iraq in 2003.

[3] Examining leadership change elsewhere in the Middle East would also be valuable. Iran, Libya and the Palestinian Authority would also be important to examine, given the potential for dramatic change in these countries.

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nesses of current leaders and their possible heirs to tease out how a change in the individual at the helm may affect government policies. When possible, the relative power of various alternative leaders is assessed to give a sense of the likelihood of various succession alternatives.

New regimes are likely to be cautious as their leaders try to consolidate power. However, new leaders may be particularly hesitant to risk unpopularity by cooperating with U.S. initiatives. Missteps are inevitable. Leaders may also overestimate their military forces' strength, trust unduly in international support, believe they can intimidate their adversaries, or otherwise have misperceptions that might lead to conflict. The potential changes, of course, are not all negative. In Saudi Arabia, Crown Prince Abdullah may be able to dampen anti-regime sentiment and initiate difficult reforms.

It is tempting for the United States to try to intervene in the process of regime change. The United States has few effective instruments for limited intervention, however, and open pressure often backfires. To hedge against unexpected change, Washington should consider increasing contacts with leaders and factions who are out of power but enjoy considerable support. The United States should also focus more on cultivating public opinion. Given that many countries are vulnerable to sudden changes, and almost all may, at some point, hesitate to provide access to placate domestic opinion, having many options is necessary.[4]

Parameters of Regime Change

Regime change and its implications are difficult for outsiders to predict. Western knowledge of elite politics in the Middle East is often limited. Indeed, even well-informed locals are often caught by surprise: few in Jordan anticipated that King Hussein would alter the long-established successor from his brother Hassan to his son Abdullah in his dying weeks. At times, the surprise is far more dramatic. Iran suffered a revolution in 1979 that caught almost all observers by surprise; other countries regularly suffered coups or unrest that few predicted.

Leaders differ tremendously, even if their countries' social systems and strategic environments hold constant. Leaders are capable of dramatically changing their country's foreign policy orientation, going to war despite unfavorable military circumstances, designing new domestic institutions or weakening old ones, or otherwise shaping—in addition to reacting to—their domestic political structures and international circumstances.[5] Egypt's President Anwar Sadat, for

[4] At times, a regime's leadership may prove so dangerous that military intervention is required to topple a regime. The U.S.-led campaign against Iraq in 2003 is one example. This article, however, focuses on leadership change in ways that exclude direct efforts to topple a regime. Many of the implications are immediately relevant to considerations of whether a regime should or should not be removed.

[5] Daniel Byman and Kenneth Pollack, "Let Us Now Praise Great Men: Bringing the Statesman Back In," *International Security* 25 (Spring 2001): 107–146.

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example, led Egypt out of the Soviet camp into the American one, conducted a successful surprise attack on Israel, negotiated a peace agreement with Israel, liberalized Egypt's economy, and otherwise transformed Egypt's domestic, regional, and international policies.

Indeed, dramatic rapid regime change is possible in the Middle East, where both demagogues and visionaries have appeared with surprising frequency. During the 1950s and 1960s, Egypt, Iraq, Libya, Syria, and Yemen all experienced military coups. In 1979, a popular revolution ousted the Iranian regime. Algeria's attempt to open up its political process in the early 1990s led to a de facto military coup and a civil war. Even such democratic countries as Turkey and Israel have dramatically changed their policies when new leaders have risen to the fore.

Greater public influence on decision making is also possible, and may even be likely. Liberalization and democratization are proceeding fitfully in the region, while the information revolution is making more citizens aware of events and able to react to them quickly. These trends hardly constitute the complete transformation of Arab politics, but they do suggest that popular opinion is a growing force that should be considered by U.S. decision makers. To be clear, public opinion will not exercise a direct influence, but it may constrain what leaders do, particularly if they are politically weak.

Categories of Regime Change

Regime change can follow at least three paths. First, and most obviously, it can involve a transition from one leader to another from the same cadre or power base. This would include the transition from father to son in Bahrain, Qatar, Morocco, Jordan, and Syria in the last decade, the shift to another member of the family (e.g., from Saudi Arabia's King Fahd to his half-brother, Crown Prince Abdullah as the king's health has faltered), or a transition to a leader who comes from the same set of elites and interests as the existing leader (e.g., Vice President Mubarak's ascension after the assassination of Egyptian President Sadat in 1981). This transition need not be formal or even peaceful: a coup that replaced one military leader with another (Hafez al-Assad over Salah Jadid) or *coups de famille* (e.g., Oman's Sultan Qaboos's peaceful takeover from his father) would fall into this category as well.

The second category of changes involves a shift from one set of elites to another. The range of alternatives is, in theory, vast. Elites can come from a different ethnic group, a different social class, a different region of the country, and so on. In the Middle East, however, religious leaders are usually the most organized set of rival elites. For the most part, Middle Eastern regimes have successfully co-opted or repressed trade unions, intellectuals, professional associations, and merchants. Religious groups are harder to suppress. They typically draw on an existing organization of mosques and community networks. Because religion is integral to the lives of many citizens, few regimes are willing to

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openly suppress religious practice. Moreover, several Middle Eastern regimes depend on religion for their legitimacy. Thus, it is not surprising that in recent years, Islamists have proven a grave challenge to area regimes. Islamists captured the state in Iran and Sudan, and have at times posed a serious challenge to the regimes of Syria, Egypt, Saudi Arabia, Bahrain, Jordan, Algeria, Libya, and the Palestinian Authority.

A third category of change involves a shift from elite-based rule to a regime that more closely involves the general population. This could occur because a popular revolution installs a regime that depends on large segments of the population or from a move toward democratization, which allows ordinary individuals a greater voice in politics and the selection of leaders. In many circumstances, however, this may not represent a change in the face of the leadership, but rather the interests the leaders represent. Existing leaders may try to cultivate the populace out of a genuine commitment to democracy, to gain support for unpopular changes, or to bolster their power against rival elites.

Each of these categories requires a different level of analysis. The first level is individual: what are the strengths, weaknesses, idiosyncrasies, and objectives of particular individuals? The second level is elite-based, focusing on what characterizes a particular family or power base. The third level involves assessing potential rival groups and their agendas. How do these elites differ from the current ruling elites? Do they have different goals, or rely on different social groups for support? The converse to these questions is understanding the sources of stability. What are the geopolitical realities and limits that will inhibit changes?

The following three country studies draw on these different levels of analysis. The analysis of each country examines the different politics of key members of the current elite, the agendas of rival groups, and the sentiments of the populace at large.

Leadership Change in Saudi Arabia

Succession in Saudi Arabia appears stable. The Al Saud, who have governed the Kingdom since Abd al-Aziz seized power in a daring raid on Riyadh in 1902, have survived Western imperialism, Arab nationalism, Islamic extremism, external aggression, and other threats to their rule in the twentieth century. In so doing, they have strengthened their hold on Saudi society and smoothly passed the leadership from one member of the family of Abd al-Aziz to another.[6]

Yet change, even dramatic change, remains possible in Saudi Arabia. Given the lack of formal checks on the monarch's authority, the transition from King Fahd to Crown Prince Abdullah and the imminent succession after that have important implications. In addition, the power and autonomy of the Al Saud are not certain: a rival might emerge who better reflects public sentiment or that of rival elites, such as the Kingdom's many Islamists.

[6] Indeed, in many ways, the problems the Kingdom encountered with such inept rulers as Saud bin Abd al-Aziz demonstrate the vitality of the Al Saud. In what was in essence a family coup, Saud's powers were curtailed in the early 1960s because of his economic mismanagement and bungled at-

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This section explores the possible pace of change in Saudi Arabia, examining different succession alternatives and their policy implications. It also tries to identify what will not change. In Saudi Arabia (as in all countries), policy is shaped by geography and the opinions shared by Saudis of all political stripes.

Change within the Al Saud

King Fahd's final days are near, and his successor, Crown Prince Abdullah, is consolidating power. King Fahd relinquished day-to-day leadership to his half brother after his stroke in 1996. Abdullah, however, is in his late seventies and is only two years younger than Fahd, raising the prospect that another leader may take his place shortly.[7]

Al Saud constants. Regardless of which ruling family member takes power, the next king is likely to share certain characteristics and objectives that are common to the family in general. The Al Saud, in general, agree on most issues. As one prince commented, "We never debate direction. We debate its focus, speed, style, emphasis, colors."[8]

Most would-be leaders place the Al Saud's family interests ahead of those of Saudi Arabia in general. Ensuring their continued rule is thus a priority, one that often trumps more standard economic and strategic concerns. As a result, security concerns often reflect efforts to deflect domestic opposition as well as attempts to secure the country's borders.[9] The family was particularly sensitive to Saddam Hussein's repeated challenges to its legitimacy; relations with Iran, in contrast, have improved since 1996, as the regime in Tehran has toned down its rhetorical challenges to the Al Saud.

In style, any leader is likely to be conciliatory and a consensus builder. Although technically a monarchy, the Al Saud exhibit many characteristics of an oligarchy: leadership is often collective and consensus-based, resulting in steady but slow decisions.[10] Since consolidating power, the Al Saud, in general, have proven cautious, reacting to rather than shaping events.

The family is ambivalent in its attitude toward the United States. Fahd, Abdullah, and other Saudi leaders recognize the importance of security ties to the United States and appreciate the U.S. role in defending the Kingdom against Iraq. They fear, however, that the U.S. commitment may be transitory. In addi-

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tempts to resist Nasser's threatened pan-Arab revolution; his brother, the highly competent Faysal, was given additional power and eventually made king.

[7] The Kingdom does not have a British-style succession in which the monarchy passes from father to son. Succession has passed among the sons of Abd al-Aziz but will soon have to go to the next generation.

[8] See Susan Sachs, "Saudi Prince Urges Reform, and a Move from Shadow," *New York Times*, 4 December 2000.

[9] F. Gregory Gause III, *Oil Monarchies: Domestic and Security Challenges in the Arab Gulf States* (New York: Council on Foreign Relations, 1994), 120.

[10] Nadav Safran, *Saudi Arabia: The Ceaseless Quest for Security* (Ithaca, NY: Cornell University Press, 1988), 451–456.

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tion, they recognize that the United States is not popular in the Kingdom and are concerned that the U.S. presence is a rallying cry for oppositionists at home.[11] The Al Saud seek to continue the security relationship with the United States but prefer it to be low profile, whenever possible. Current proposals to reduce or eliminate the permanent U.S. military presence in the Kingdom are falling on sympathetic ears.

This ambivalence is particularly profound with regard to cooperation on counterterrorism. The Al Saud recognize that Islamic militancy as championed by al Qaeda is a threat, perhaps the greatest threat, to their rule. However, open cooperation with the United States only adds credibility to the Islamist charge that the Al Saud family is a puppet of Washington. The Al Saud weathered such criticism during the 2003 war against Iraq, but the family remains concerned that this may undermine its legitimacy.

Succession after Fahd. Although the Al Saud share many objectives, which member of the family leads the country remains a vital question. Abdullah differs from Fahd in several ways, with implications for the regime's domestic and foreign policies. Abdullah is also perceived as more pious and more concerned about reducing royal family profligacy than is Fahd. He has strong ties to many of Saudi Arabia's conservative tribal leaders. Although he is not anti-American, he has at times criticized Washington harshly for its pro-Israel stance and is less comfortable with Western values.[12]

If Abdullah successfully consolidates power, and lives long enough to wield it, he may be better able than Fahd or, most likely, other successors to tackle the knotty problem of economic reform. Abdullah recognizes that the Kingdom's economy requires liberalization, and his personal probity enables him to ask Saudis to make sacrifices where other leaders would be accused of hypocrisy. He is also more willing to try to cut royal family interference in business.[13] Second, Abdullah will be better able to manage Islamist criticism of the regime. His honesty and piety are respected by Islamists, making the regime under his rule less vulnerable to charges of corruption, perhaps the leading weapon in the Islamists' arsenal of rhetoric.[14]

[11] Gause, *Oil Monarchies*, 122; Simon Henderson, *After King Fahd: Succession in Saudi Arabia* (Washington, DC: The Washington Institute for Near East Policy, 1994), 47.

[12] See Sachs, "Saudi Prince"; Henderson, *After King Fahd*, 42. In May 2001, Abdullah turned down an invitation to visit Washington because of U.S. support for Israel in the Al Aqsa intifada. Abdullah also appears more willing than Fahd to cut government spending and open Saudi Arabia up economically. To the surprise of many observers, he has pushed for Saudi membership in the World Trade Organization. He has also tried to push aside military leaders, including family members, known for their graft.

[13] "Can Crown Prince Abdullah Lead His Desert Kingdom into the 21st Century?" *Business Week*, 21 May 2001, accessed at http://www.businessweek.com:/2000/00_30/b3691008.htm, 19 May 2001; Youssef M. Ibrahim, "The Saudi Who Can Speak Our Language," *Washington Post*, 24 February 2002 (electronic version), accessed at http://www.library.cornell.edu/colldev/mideast/abdlhsa.htm, 22 December 2004.

[14] M. Ehsan Ahrari, "Political Succession in Saudi Arabia: Systemic Stability and Security Implications," *Comparative Strategy* (January–March 1999): 25.

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The picture of succession after Abdullah is not clear. The Al Saud formed a family council in 2000 to help ensure consensus on key issues, but this has not led to clarity with regard to who will rule in the future. Ignorance of Saudi politics is lessening but is still profound, particularly with regard to the dynamics of ruling family decision making. Although the regime appears stable, this perception is founded on few data. Even natives have little insight into leadership issues.[15]

With this caveat in mind, several names are commonly raised when the question of succession is raised. Fahd's brother, Prince Sultan, the Minister of Defense and Aviation, is widely considered to be next in line after Abdullah. Other full brothers of King Fahd—Abd al-Rahman, Turki, Nayef, Salman, and Ahmad—are also contenders. Several of the sons of the late King Faysal (Saud, Turki, and Khalid) are respected as administrators and may be considered as candidates as Fahd's brothers age.

Several of these potential leaders, like Abdullah, are experienced administrators (several oversee strategic provinces in the Kingdom), who share the Al Saud's general perspective on the region and the world in general. However, they are not equally skilled. The sons of Faysal are believed to lack a deft political touch, raising the possibility that the regime will not manage dissent well.[16] Sultan, the most likely successor after Abdullah, is viewed by many as among the most grasping of the potential claimants to the throne, a perception that will increase the alienation many Saudis feel toward the ruling family and make belt-tightening more difficult.

Two problems may emerge, depending on who takes power and the circumstances of the transition. First, the Al Saud may be less unified than in the past. The lack of a clear contender after Abdullah may lead to dissent within the ruling family. Second, it is possible that a leader may emerge who is a poor administrator or who does not seek to rule, such as King Saud (1953–1964) and King Khaled (1975–1982), respectively. The Kingdom has weathered such problems in the past through collective leadership that included several highly competent individuals, such as the current King Fahd, who bolstered King Khaled. Whether collective leadership would work if similar problems emerged in the future is uncertain.[17]

Although the Al Saud appear firmly entrenched, our limited knowledge of Saudi political dynamics requires an assessment of potential leadership alterna-

[15] Ahrari, "Political Succession," 13. On 1 March 1992, King Fahd spelled out the procedures for succession. The throne is to remain in the hands of the children of Abdel Aziz, the founder of Saudi Arabia. The king will choose which among them will take the crown. This goes against tradition, however, according to which the royal family collectively decides who among them is most worthy. In addition, the king's decree excluded several collateral family branches, making it particularly controversial. Ahrari, "Political Succession," 17; Henderson, *After King Fahd*, 21.

[16] Henderson, *After King Fahd*, 21–28.

[17] Saud almost drove Saudi Arabia into bankruptcy and led to the Al Saud's overthrow. Ahrari, "Political Succession," 16.

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tives. Saudi Islamists are probably the most organized and popular source of opposition. They differ dramatically from the Al Saud and they disagree with the United States on such issues as the presence of U.S. forces in the Kingdom and the degree of support to give to Islamic militants. In addition, a leader who better reflects popular preferences could emerge. This latter possibility would usher in a new era for U.S.–Saudi relations, one in which cooperation would be more difficult.

Constants in Saudi Society

For most Saudis, domestic concerns appear to take priority over foreign affairs. In the 1950s and 1960s, much of the Saudi elite was consumed with the question of the proper attitude toward Arab nationalism, but most Saudis today are focused on issues of corruption, prosperity, and morality. Foreign affairs are often ancillary to these issues, or viewed with these concerns in mind.

Many Saudis oppose close relations with the United States and see the United States as a foe rather than a friend. As F. Gregory Gause argues, "Many Saudis . . . continue to think that their country's finest hour was when it defied the United States with the 1973 oil embargo."[18] Saudis accept many conspiracy theories about U.S. intentions in the region, and even Western-educated liberals believe that the United States seeks to protect the Al Saud, not Saudi Arabia.[19] Nor do the Saudi people share the regime's attempt to balance American and Arab concerns on the Palestinian issue. Unauthorized demonstrations against Israel, rare in Saudi Arabia, occurred in response to the outbreak of the Al Aqsa intifada.[20] Although many Saudis do not support terrorism against the United States, at least some segments of the Kingdom favored the attacks of September 11 and in general believe that violence is justified against Americans, particularly American soldiers fighting in Iraq or elsewhere in the Middle East. Many others embrace conspiracy theories about who was responsible, while far more believe that U.S. policy in the Middle East is the ultimate cause of the attacks.

Saudis in general have little love for Iraqis and even less for Iranians. Although the suffering of the Iraqi people under sanctions received attention in opposition circles, this appeared to be, in large part, a means of criticizing U.S. policy. The suffering of Iraqis in the 1980s received little sympathy. Many Saudis, particularly Islamists, are also virulently anti-Shi'a, considering them to be apostates. As a result, they are suspicious of Iran's regime and also of the future of Iraq, which has a Shi'a majority. Islamist Saudis would view a secular Iraq, or one dominated by Iraq's Shi'a, with concern. However, a more democratic Iraq that had an accountable government would also be viewed as a potential model for the Kingdom, increasing pressure on the Al Saud to liberalize.

[18] Gause, *Oil Monarchies*, 122.
[19] Ibid., 141.
[20] See Sachs, "Saudi Prince."

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Saudi Islamists

Saudi Islamists are probably the most organized source of opposition to the regime and, if the Al Saud became paralyzed by infighting or if the Saudi economy became mired in a recession, they might find an opening for increased influence. Through a network of mosques, schools, and religious associations, many supported by the state, Islamists have a means to organize and propagate their message. Perhaps 20 percent of Saudis see themselves as extreme conservatives on matters of religion, with many more sharing many of the objectives of the Islamists.[21]

The Islamists' attitude toward the Al Saud is ambivalent. Leading Islamist critics of the regime believe that Islam is under siege and that the Al Saud have contributed to, rather than fought against, this problem. More mainstream Islamists are troubled by the profligacy of many of the Al Saud, which they see as reflecting an overall degeneration of Saudi morality. Crown Prince Abdullah, however, is respected for his piety and honesty.[22]

The Islamist agenda would represent a departure from Al Saud policy in several ways. The Islamists' primary agenda is internal: they seek to resist Westernization and secularization, and otherwise preserve Saudi Arabia's traditional order. Islamists also oppose the corruption and conspicuous consumption that have characterized much of the Al Saud's rule.[23] Their economic plans appear muddled. They issue vague calls for justice and an end to corruption, but provide few specifics. However, Islamists also have an ambitious foreign agenda. They call for aiding Muslim causes throughout the world and, as an obvious corollary, oppose ties to anti-Islamist Arab regimes such as Syria and to the United States, for its support for Israel.[24]

In the eyes of many Islamists, the United States is a dual threat. Islamists disagree with many aspects of U.S. foreign policy, which is viewed as hegemonic and hostile to Islam. Islamists also see the United States as a cultural threat: the U.S. military presence, in their view, brings with it Western promiscuity, vice, and threatening social mores. Many Islamists believe that the U.S. troop presence emboldens women and others to challenge traditional roles.[25] A U.S. withdrawal from the Kingdom would reduce some of this criticism, but more ineffable concerns regarding U.S. culture and supposed hostility to Islam will keep these grievances acute.

[21] Mamoun Fandy, *Saudi Arabia and the Politics of Dissent* (New York: St. Martin's Press, 1999), 4, 33.

[22] Ibid., 3, 36.

[23] Ibid., 56.

[24] See Sachs, "Saudi Prince"; Fandy, *Saudi Arabia and the Politics of Dissent*, 59.

[25] Gause, *Oil Monarchies*, 142; Fandy, *Saudi Arabia and the Politics of Dissent*, 49. For example, the protest of Saudi women drivers during Operation Desert Shield is believed by Islamists to have been encouraged by the U.S. military presence.

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Geopolitical Constants

Saudi Arabia is vulnerable. It lacks the population and fighting power to defend itself against the armies of its large neighbors and would be open to aggression or intimidation should the United States withdraw its forces from the region. Any successor regime will also rely on Western technical assistance to increase oil production capacity and streamline the production process. Even if a different leadership comes to power, it will face this security problem and thus may be compelled to look outside the Kingdom for assistance. The toppling of Saddam's regime gives the Kingdom breathing space for years to come, but both Iraq and Iran remain long-term concerns, given their large populations and historic aspirations for regional leadership.

Any successor regime is likely to find itself facing dilemmas comparable to those that have plagued the Al Saud. Under the Al Saud's leadership, the Kingdom "was simply too rich and ostensibly influential to be ignored by others, and too weak and cautious to be able to ignore them."[26] Alternative leaderships are likely to share this combination of wealth and weakness. Unlike the Al Saud, however, a new regime may not recognize the problem until the threat is strong and imminent.

Implications

Who rules in Riyadh is a vital question for the United States. Although the most likely alternatives are favorable to U.S. interests, dramatic change remains a distinct possibility and, should it occur, Saudi Arabia may go from a leading U.S. ally to a potential foe. The majority of Saudis appear hostile to the United States and to Israel. Although they are not likely to ally with Iran or Iraq, they might curtail cooperation with the United States, particularly the U.S. military. Geopolitics may eventually force them to find an outside power to balance Iraq, but it may take years or an immediate crisis for a new regime to fully appreciate its vulnerability.

Domestically, Saudi Arabia may become more conservative, not less. Political liberalization and the growth of civil society are likely to empower Islamists, who are the best-organized opposition force and have a message that has strong popular appeal. The regime may also face pressure to avoid contentious economic reforms, particularly if it is not able to rein in the royal family's conspicuous lifestyle.

Even if Saudi Arabia retains a strong relationship with the United States, it may have difficulty acting decisively. Consolidating power will take time, and Abduallah's age makes it likely that the succession question will be an active one for some time to come. As a result, any leader will have to gain a consensus among the Al Saud in general, a process that is, at best, time-consuming and, at worst, paralyzing.

[26] Safran, *Saudi Arabia, The Ceaseless Quest*, 499.

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Even if there is no overt change from the Al Saud to another faction in Saudi society, future leaders may be less willing to sacrifice their popularity at home to preserve a strong relationship with the United States. Although the Al Saud, in general, recognize the importance of security ties to Washington, a shortsighted leader facing domestic pressure could cut or curtail U.S. activities to court the favor of the Islamists.

Leadership Change in Syria

The regime that Bashar al-Assad heads is likely to remain in power, but its grip could become weaker in coming years. Bashar's father, Hafez, ruled Syria with an iron hand for almost thirty years until his death in 2000, transforming the chronically unstable country into a bulwark of stability. This transformation came at a price. The regime relied on brutal repression, economic cronyism, and minority rule to stay in power. It is not clear whether the inexperienced Bashar can inspire the same mix of loyalty from his henchmen and fear among his opponents while successfully reforming the economy, as he has promised to do. Assessing the outlines of regime change in Syria is thus essential if we are to understand the range of possible, if not necessarily likely, scenarios for the country's future.

Bashar versus Hafez

Definite portraits of Bashar al-Assad and his father Hafez are difficult to draw. Bashar has been on the Syrian stage for less than a decade, and his father was famously known as the "Sphinx of Damascus" because he puzzled observers in Syria and the region as to what his true goals were. Nevertheless, given the concentrated nature of power in Syria's political system, understanding any differences between the two is essential.

Bashar lacked the experience his father had when he took power. After years in the military (and thus, in Syria, in politics), Hafez became a key figure after a military coup in 1966 that led his Alawi community to power. In 1970, he formally took control after ousting his rivals. Unlike his father, Bashar had little background in politics or governing when he took power. His older brother Basil had been groomed for the throne, but he died in an automobile crash in 1994. Bashar, then only twenty-eight and an ophthalmologist living in England, was quickly elevated.[27]

Both leaders appear to share several similarities. Neither lets ideology blind them to the necessities of power politics. Hafez worked with Christians in Lebanon against Arab nationalists, tried to divide the Palestinian camp, aided Iran

[27] Any pretense that Bashar was being selected according to established rules was quickly dispelled. In the six months before Hafez's death, Bashar went from being a colonel to the commander-in-chief of Syria's military. On the day of his father's death, the constitution was amended, lowering the age for assuming the presidency from forty to thirty-four, Bashar's age. Rachel Bronson, "Syria: Hanging Together or Hanging Separately," *The Washington Quarterly* 23 (Autumn 2000): 97.

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over Iraq during their eight-year war, and otherwise turned his back on the Baath's Arab nationalist agenda. Shortly after taking power, Bashar made a tentative rapprochement with Iraq and Jordan and otherwise tried to preserve calm abroad while he consolidated power at home.

It is not known whether Bashar shares several qualities that helped Hafez stay in power and preserve Syria's influence. Hafez was cautious. After Israel's overwhelming victory in 1967, Hafez became acutely aware of Syria's military limits and tried to avoid a direct confrontation, even as he used terrorism to maintain pressure on Israel.[28] Hafez was also calm and collected, even in the face of military disasters or widespread instability. Finally, Hafez was often ruthless, willing to turn on longtime comrades and slaughter tens of thousands of Syrians to stay in power.[29] As a result, he could advance his agenda, even if it was not popular at home, and otherwise dominate the political debate.

Bashar's inexperience, in contrast, inspires neither fear nor confidence. Friends describe his demeanor as meek and awkward.[30] Many doubt whether he can rule effectively and, more fundamentally, whether he has the right to rule.[31] As a result, he must move cautiously while consolidating his rule.

So far, Bashar's biggest impact has been in the domestic area. He has not initiated changes that would fundamentally threaten the system or his rule, but minor dissent is tolerated, a dramatic change from his father's draconian policies. Bashar has emphasized economic reform in his speeches. In addition, he has allowed human rights organizations and civil society to reemerge, albeit tentatively.[32]

Bashar has also eased, though not ended, several of Syria's most contentious foreign policy rivalries. Relations with Turkey have improved since he took office.[33] Bashar also proved more amenable to cooperating with Saddam's Iraq, even in the regime's dying days.[34]

[28] Martha Neff Kessler, "Syria, Israel and the Middle East Peace Process: Past Success and Final Challenges," *Middle East Policy* 7 (February 2000): 70.

[29] Harvey Sicherman, "Hafez al-Assad: The Man Who Waited Too Long," *Peacefacts*, 7 (July 2001): electronic version, accessed at http://www.fpri.org/peacefacts/071.200007.sicherman.assadwaitedtoolong.html, 22 December 2004.

[30] "Bashar's World," *The Economist*, 17 July 2000, electronic version, accessed at http://www.economist.com/displaystory.cfm?story_id=81745&CFID=43898303&CFTOKEN=f32ca7-d2021e79-7311-4241-b9ee-d483ce87c58f, 22 December 2004.

[31] Bronson, "Syria: Hanging Together," 95.

[32] Public meetings, long banned, are now tolerated, and several hundred political prisoners have been released. Bashar's regime has allowed petitions calling for change to circulate. He has also tried to increase access to mobile telephones and the Internet, both of which were suspect because of their potential for sedition. Roula Khalaf, "Bashar Steps Out of His Father's Shadow," *Financial Times*, 16 January 2001, 15; "Bashar's World"; Alan Makovsky, "Syria Under Bashar al-Asad: The Domestic Scene and the 'Chinese Model' of Reform," *Policywatch* 512 (January 2001): electronic version, accessed at http://www.washingtoninstitute.org/watch/policywatch/policywatch2001/512.htm, 22 December 2004.

[33] The roots of this rapprochement lie in the Syrian expulsion of the Kurdish Workers Party (PKK) head Abdullah Ocalan in October 1998, a decision made under threat of Turkish military intervention.

[34] Ahman S. Moussalli, "The Geopolitics of Syrian–Iraqi Relations," *Middle East Policy* 7 (October 2000): 104–105.

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Hafez's attitude toward the Israeli–Palestinian dispute was a mixture of pride, contempt, and opportunism. He thought little of Arafat and the Palestinian movement in general, but he believed that the Palestinian dispute was at the center of regional instability. Thus, he sought to control and guide the Palestinian struggle, reducing any radicalism that could shake his regime while trying to direct it to weaken Israel in a manner that served Syria's purposes. But his policies may not be entirely Machiavellian. Some analysts believed that he saw his dignity, and that of Syria, as linked to the manner in which the dispute was resolved, a belief that made him reluctant to make concessions in the peace negotiations.[35]

Bashar initially continued his father's approach on the peace negotiations. Like his father, he has called for "peace of the strong"—meaning, in effect, few Syrian concessions on the Golan Heights. As the second intifada continued, moreover, he allowed (and, at times, may have encouraged) Arab and Islamic radicals (in Syria and, particularly, in Lebanon) to attack Israel. He has also used pan-Arab and anti-Israel rhetoric to shore up support among Syrians in general. In addition, he has supported Hezbollah's attacks on Israel as a means of keeping pressure on the Israeli government. Because of his weak domestic position, making any concessions to Israel beyond what his father promised would be difficult. However, Bashar's support of anti-Israel radicals goes beyond domestic politics. He appears committed to at least some degree of support for radical activity.

A Shift from Bashar to Other Domestic Actors

Bashar has not made it clear who will succeed him should be die prematurely. The most likely threat is from rivals within the power elite, particularly the Alawi "Barons." A less likely danger, but one that would more profoundly change Syria, would be an Islamist-influenced regime.[36] Whoever takes power would probably have considerable latitude to implement his policies because of the weak state of Syrian institutions.

The Alawi "Barons." In his years in power, Hafez al-Assad created a family- and clan-based system with a veneer of ideology.[37] Hafez systematically

[35] Henry Siegman, "Being Hafiz al-Assad: Syria's Chilly but Consistent Peace Strategy," *Foreign Affairs* 79 (May/June 2000): 3; Kessler, "Syria, Israel and the Middle East Peace Process," 72.

[36] Any ruler would also have to contend with the sentiments of Syria's population, but there is little information on their preferences. Syrians appear reconciled to Israel's existence but in general favor a hard line on any negotiations. In contrast to much of the Syrian leadership, sympathy for the Palestinian cause runs deep. A shared history and close proximity to many refugees have left many Syrians acutely aware of the Palestinians' miseries. Most Syrians appear to see peace as likely, but desirable only if it involves significant Israeli concessions. Most Syrians seek a complete return of the Golan Heights as a condition for peace, and Hafez al-Assad's refusal to make concessions on this issue appeared to have widespread support. Kessler, "Syria, Israel and the Middle East Peace Process," 68–81.

[37] There is a nominal Baath ideology. It promotes a secular version of Arab unity, led by a small vanguard, which, in turn, is led by a supreme leader. That said, Syria (and that other nominally Baath

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placed members of his Alawi community in the country's leading security and army posts. These individuals control (although they do not always formally head) Military Intelligence, the General Intelligence Directorate, Air Force Intelligence, and Political Security, as well as several elite military units that, in effect, serve as a praetorian guard. These "Barons" could move against Bashar if he proved incompetent or threatened their hold on power.

Should a putsch within the elite occur, it is not likely to result in a dramatic change in Syrian policy, particularly with regard to foreign policy. These "Barons" are focused on ensuring their community's, and of course their own, dominant position more than on any particular policy goal.[38] Like Hafez al-Assad, they will have to avoid highly controversial policies that might stir up popular resentment. However, it is possible that a leader may emerge and consolidate power, and, like Hafez, be able to impose his own vision on Syria and its policies.

Syrian Islamists. Islamists in Syria are weak. The Baath regime devastated the Islamist movement after its opposition led to widespread violence and instability in Syria from 1977 to 1982. Arrests, imprisonment, torture, and other forms of oppression, including the destruction of the city of Hama, a stronghold of the Muslim Brotherhood, involving thousands of civilian deaths, left the movement without an effective leadership or organization inside Syria.[39]

Islamist sentiment remains powerful. Perhaps 70 percent of Syrians are Sunni Muslims, and religious organizations retain a social network throughout Syrian society.[40] Islamists are highly suspicious of the Alawi-led regime. Many Islamists see Alawis as apostates, and they all oppose the vigorous secularism that the Baath party champions. Assad's brutal crackdown on Islamists in the early 1980s led to an enduring hatred among Islamist ranks.[41] Even many less-religious Sunnis regard the Alawis as upstarts and seek to restore their community's former dominance. If infighting paralyzed the Alawis, particularly if it led to a split in the military, Islamists might increase their influence.

An Islamist takeover would result in a wholesale transformation of Syrian society. The imposition of Islamic law and more-traditional dress codes would replace the secular credo of the Baath. Moreover, Alawis and Sunnis who benefited from the current regime would probably be dispossessed and possibly se-

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state, Iraq) had used the ideology as a pretext for political domination by an individual, constructing an authoritarian state to this end. Siegman, "Being Hafiz al-Assad," 2–7.

[38] Michael Eisenstadt, "Who Rules Syria? Bashar al-Asad and the Alawi 'Barons,'" *Policywatch* 472 (June 2000): electronic version, accessed at http://washingtoninstitute.org/watch/Policywatch/policywatch2000/472.htm, 22 December 2004. For a thorough overview of the role of ethnic and sectarian factions during the last thirty-five years, see Nikolaos Van Dam, *The Struggle for Power in Syria: Politics and Society Under Asad and the Ba'th Party* (New York, London: I.B. Tauris, 1996).

[39] Van Dam, *Struggle for Power*, 111–117.

[40] Bronson, "Syria: Hanging Together," 100.

[41] Kessler, "Syria, Israel and the Middle East Peace Process," 86; Van Dam, *Struggle for Power*, 107–108.

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verely repressed. The Islamists' foreign policy views are not carefully articulated but, like Islamists elsewhere, the Syrian Muslim Brotherhood is highly critical of peace negotiations with Israel.[42]

Geopolitical Constants

Whoever is in power in Damascus must confront several bitter realities of Syria's current political position. Most important, Syria is poor. The economy slowly stagnated under Hafez al-Assad, and Bashar's halfhearted efforts to liberalize have so far done little. Any regime will have few resources to co-opt domestic interest groups or to build up Syria's military strength. Unlike Saudi Arabia, Syria lacks economic influence.

Damascus will be vulnerable to bullying by its stronger neighbors. Syria's conventional military forces are weak, and the gap between it and its neighbors, especially Turkey and Israel, is likely to grow. Its military forces are large in size but poorly equipped and not well trained. Many of the elite units are focused on domestic stability, not on protecting Syria against its enemies. In 1998, Ankara forced it to stop support for the Kurdistan Workers Party through a direct threat of military force. In addition, Syria cannot risk too much escalation in its confrontation with Israel, inasmuch as in the end, Israel's superior forces would easily defeat those of Syria.

As a result of this conventional weakness, Syria will probably rely heavily on chemical weapons, missile programs, and other asymmetric threats. Missiles allow Syria a means to strike Israel, something its troubled air force and poorly trained and equipped army probably could not accomplish. In addition, missiles allow Syria to deliver chemical weapons, a potential deterrent against Israel's nuclear forces. Damascus will probably retain its ties to terrorist organizations, even if it does not employ them, to preserve a cheap and effective means of striking its opponents.[43]

Implications

Whether Syria's current power elite will support Bashar over the long term remains an open question. Should he stumble, they may oust him or reduce his authority, transforming the country from a dictatorship into an oligarchy. Bashar's need to consolidate power will probably make him cautious, particularly on contentious foreign policy issues such as peace negotiations with Israel.

In addition, efforts to reform Syria's backward economy—which is necessary if Syria is to avoid a steady decline in power and influence—may also generate instability. Allowing the free movement of individuals and the exchange

[42] Van Dam, *Struggle for Power*, 92.

[43] Monterey Institute of International Studies, Center for Nonproliferation Studies, "Syria's Scuds and Chemical Weapons," accessed at http://cns.miis.edu/research/wmdme/syrscud.htm, 19 January 2001.

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of ideas poses a direct challenge to the Baath's domination of political discourse in the country. The Syrian merchant class has traditionally been a Sunni stronghold, and the Baath's economic reforms emphasize state control or industrialization as a means to offset the political power of the merchants.[44] In addition, many within Bashar's Alawi and Sunni power base depend on exclusive access to government contracts and on corruption to ensure their advantage. As *The Economist* notes, "If the army cannot use its private road into Lebanon as a tax-free conduit, how will it dodge the 250 percent duty on cars and other luxury imports?"[45]

Instability is even more likely if other Alawi leaders or Islamists take power. As Nikolaos Van Dam notes, "In Syria the principle of collective military leadership has, however, never been practiced successfully for long."[46] Politics could return to the chronic instability of the 1950s and 1960s, when coups were the order of the day. If the Alawis were forced from power, violence and unrest would be even more likely as Islamists and other victims of the Baath rule seek their revenge.

The impact of regime change will be far more profound at home than abroad. A shuffle within the Alawi elite would probably result in little change. Although an Islamist-influenced government would be far more hostile to Israel, it, too, would be bound by Syria's weak economy and crumbling conventional forces. A more hostile regime in Damascus might make cooperation on issues such as counterterrorism more difficult, but given the poor state of U.S.–Syrian relations in general, the overall impact will be limited.

Leadership Change in Egypt

Egyptian President Mubarak does not rule with the same degree of control as do the leaders of Saudi Arabia and Syria, but this looser rule is a strength of the Egyptian system, not a weakness: it indicates that the regime is well-entrenched and goes beyond a single individual, family, or communal group. Yet Egypt's regime, like those of other Arab states, relies on a mix of co-optation and coercion to ensure its rule. The Egyptian public, particularly elements that oppose the current regime, are ignored or repressed. Because the public and opposition have objectives widely different from those of the current regime in Cairo, regime change could result in a fundamental transformation of Egypt's domestic politics and foreign policy.

Change within the Egyptian Elite

Egyptian President Mubarak is often considered an unremarkable leader. Mubarak's views appear closer to the norm of Egyptian elites than were those of

[44] "Bashar's World."

[45] "Is Syria Really Changing?" *The Economist*, 18 November 2000.

[46] Van Dam, *Struggle for Power*, 132.

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past Egyptian leaders. In many ways, he appears to typify the views of Egypt's military and security leadership. He lacks Gamal Abdel-Nasser's charisma or Anwar Sadat's dynamism.[47] Mubarak is stolid, conservative, and predictable. Domestic stability is his primary concern. He has avoided grave mistakes in his twenty years in power, but at the same time, he has allowed the government to become torpid.[48]

There is no clear succession procedure, should Mubarak die, but an immediate successor would probably have a military or security background.[49] Mubarak has not appointed a vice president, probably to prevent any rival from building a power base.[50] Since the monarchy was overthrown in 1952, however, all of Egypt's leaders have come from the military. Possible candidates include Omar Suleiman, a veteran of Egypt's security services; the head of the air force, Ahmed Sharif; Armed Forces Chief of Staff Magdi Hatata; and Osama al-Baz, a political advisor to Mubarak.[51] With the exception of Osama al-Baz, these individuals have little experience in foreign policy. This relatively narrow circle of military and security leaders has tried to co-opt other military and government officials, as well as leading businessmen, while keeping the Egyptian people away from decision making.[52]

Egyptian elites share one overriding objective: to ensure their own grip on power. They enjoy a privileged economic position and believe the current system is a bulwark against religious radicalism. Leaders, however, can have tremendous latitude: Nasser and Sadat demonstrated that Egyptian leaders have considerable leeway on even such core issues as economic reform and relations with Israel. However, security and military elites are sensitive when economic reforms or foreign policy changes might spill over into unrest at home.

Many Egyptian elites recognize the importance of the U.S.–Egyptian relationship. Since the signing of the Camp David treaty in 1979, the United States has provided almost $40 billion in military and economic aid. Some elites believe this assistance helped Egypt turn its stagnating economy around after the Gulf War. In addition, the United States is viewed as a stabilizing force with

[47] Sadat, in particular, was a rare leader. As Jerrold Green notes, "Anwar Sadat was not only able to assume power and to retain it, but also to exercise it with, at times, breathtaking boldness, innovation, imagination, and courage." Jerrold D. Green, "Leadership Succession in the Arab World: A Policy-Maker's Guide." University of Judaism, The Center for Policy Options, Summer 2000, 16. Accessed at http://cop.uj.edu/Content/ContentUnit.asp?CID=529&u=1500&t=0, 26 January 2005.

[48] This composite of Mubarak is taken from the author's interviews of several U.S. government officials, academic analysts, and policy analysts.

[49] Technically, the speaker of the People's Assembly becomes the president until the Assembly chooses a candidate, who is then subject to a popular referendum. However, that candidate is expected to be determined by Egypt's power brokers and then handed down to the Assembly for ratification.

[50] Egyptians joke that "the most dangerous job in Egypt is to be the second-most powerful person in the country." Jon B. Alterman, "Egypt: Stable, but for How Long?" *The Washington Quarterly* 23 (Autumn 2000): 113.

[51] Author's interviews with U.S. academics; Alterman, "Egypt: Stable, but for How Long?" 114.

[52] Alterman, "Egypt: Stable, but for How Long?" 113.

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regard to Israel–Arab tension.[53] Some business elites see peace and ties to the United States as necessary if Egypt is to prosper. That said, many elites have been highly critical of the U.S.–Egyptian relationship, particularly as the Middle East peace negotiations have soured, even though they recognize that it does bring Egypt a range of benefits.[54]

Geopolitical and Societal Constants

Whoever rules Egypt will have to contend with the country's distinct characteristics and geopolitical situation. These include:

- Expectations of leadership. Egyptians have always considered themselves the leading Arab nation, a perception reinforced by its large population and proud history. Both the Egyptian people and the elites expect their leaders to take an active role in Arab and regional issues.
- Military weaknesses and strengths. Egypt is militarily strong, on paper. It possesses large quantities of sophisticated equipment.[55] If there is an "Arab" force deployed in the Gulf to assist the states of the Gulf Cooperation Council, Cairo is a logical candidate to head it. That said, Egypt's military poses little challenge to Israel: its level of training is poor, it does not use advanced technology well, and it cannot conduct combined arms operations. Should the Egyptian–Israeli relationship sour completely, a conventional military option is not available.
- In general, Egyptians outside the ruling circle do not seek a close relationship with the United States. The Egyptian media, including pro-government organs, are often highly critical of U.S. policies and lambaste the "Jewish lobby" in Washington.[56] U.S. support of Israel is roundly criticized, inasmuch as Egyptians believe that Washington could deliver concessions from Israel.[57] As the second intifada has continued, this criticism has grown. The United States is generally seen as high-handed and biased against Arabs.

[53] Yoram Meital, "Domestic Challenges and Egypt's U.S. Policy," *Middle East Review of International Affairs* 2 (November 1998): electronic version, accessed at http://meria.idc.ac.il/journal/1998/issue4/jv2n4a1.html, 22 December 2004.

[54] For example, Abd al-Halim Abu Khazala, a former defense minister, once considered a possible successor to Mubarak, wrote that U.S. ties to Israel damage Egypt's interests. See Meital, "Domestic Challenges."

[55] The United States has sold Egypt modern tanks, artillery pieces, fighter aircraft, and other systems that have augmented Egypt's military. For a review, see David Honig, "A Mighty Arsenal: Egypt's Military Build-Up, 1979–1999," accessed at http://www.washingtoninstitute.org/watch/policywatch/policywatch2000/447.htm, 22 December 2004.

[56] Abdel Monem Said Aly, "Egypt–U.S. Relations and Egyptian Foreign Policy," *Policywatch* 448 (March 2000): electronic version, accessed at http://www.washingtoninstitute.org/watch/policywatch/policywatch2000/448.htm, 22 December 2004.

[57] This view is endorsed by many Egyptian leaders. President Sadat claimed that the United States holds "90 percent of the cards" with regard to Israel's policies. As quoted in Meital, "Domestic Challenges."

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The Al Aqsa intifada and the war against Iraq have worsened Egyptian perceptions of the United States. In one poll taken by the Pew Charitable Trust in the last months of 2002, only 6 percent of Egyptians held a favorable opinion of the United States.[58] Thus, while current Egyptian elites appreciate the benefits of ties to Washington, this appreciation is not reinforced by a broader sentiment of good feeling toward the United States.

The Islamist Alternative

Islamists represent the most organized source of opposition to the current order. There are many tendencies within the broad Islamist movement, ranging from the radical *Jama'a al-Islamiyya* to more-mainstream organizations such as the Muslim Brotherhood, to the many individual religious leaders who regularly work with the Egyptian government. The groups are often at odds with one another, and even groups with similar objectives have highly different views on how to pursue them.[59]

Islamist movements draw on several grievances to enhance their popularity. Islamist groups have capitalized on feelings of alienation among Egypt's poor, many of whom believe they have little voice and few opportunities. Even many Egyptians who do not endorse the Islamist ideology are sympathetic to it. Islamists are widely seen as honest, and their message promises dramatic change. In effect, they represent the only voice of opposition to the current order.[60]

Islamist goals are at variance with the policies of the current regime. As with Islamists elsewhere, their primary agenda is domestic: they seek the implementation of the Islamic *sharia* as Egypt's law. Many Islamist groups are hostile toward Jews and Christians, including Egypt's large Coptic Christian community, which is roughly 6 percent of the population.[61] Many are also suspicious of Sadat's and Mubarak's economic liberalization programs, instead endorsing vague calls for economic justice and a major government role in the economy. In their rhetoric, Islamists seek to return to a policy of confrontation with Israel and are highly critical of close ties to the United States.[62]

[58] "America's Image," *Online Newshour*, accessed at http://www.pbs.org/newshour/bb/media/july-dec02/kohut_12-05.html, 22 December 2004.

[59] For a comparison, see David Zeidan, "Radical Islam in Egypt: A Comparison of Two Groups," *Middle East Review of International Affairs* 3 (September 1999): electronic version, accessed at http://www.biu.ac.il/SOC/besa/meria/journal/1999/issue3/jv3n3a1.html, 22 December 2004.

[60] In addition, many wealthy Muslims, including many outside Egypt, give generously to religious causes, strengthening religious influences. Egyptians working in Saudi Arabia were exposed to a far harsher and more extreme version of Islam. Fawaz Gerges, "The End of the Islamist Insurgency in Egypt? Costs and Prospects," *Middle East Journal* 54 (Fall 2000): 600; Alterman, "Egypt: Stable, but for How Long?" 109–110.

[61] Central Intelligence Agency, *CIA Factbook*, "Egypt," accessed at http://www.odci.gov/cia/publications/factbook/geos/eg.html#People, 26 April 2001.

[62] Gerges, "End of Islamist Insurgency," 602–603; Zeidan, "Radical Islam in Egypt"; Fawaz Gerges, "The Decline of Revolutionary Islam in Algeria and Egypt," *Survival* 41 (Spring 1999): 114. In the mid-1990s, the United States established contacts with mainstream Islamists, such as the Muslim Brotherhood, as a hedge should instability sweep Egypt. It discontinued such contacts after heavy pres-

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For now, Islamists are not likely to topple the current regime. Radical Islamist organizations such as *Jamaa'at al-Jihad* and the *Jama'a al-Islamiyya* engaged in a disorganized paramilitary struggle against the regime from 1990 until 1997, resulting in perhaps 1,300 casualties.[63] In the course of fighting the insurgency, Egyptian security forces arrested thousands of Islamists and penetrated and disrupted revolutionary cells. The regime licensed and controlled previously independent Islamist civil organizations, both radical and mainstream, and purged the armed forces of suspected radicals. Non-Islamist opposition voices, fearing the Islamists' radical message, backed the government's campaign.[64] The campaign devastated the Islamists: radical groups were shattered, and mainstream groups such as the Brotherhood found themselves on the margins of the overall debate.[65] The regime continues to arrest and detain suspected radicals, making it difficult for them to recruit and organize.

In addition to repressing the Islamists and their supporters, the regime also tried to co-opt less radical elements during the mid-1990s. The regime promoted the trappings of Islam, increasing religious education and media programming. Mainstream Islamists, such as those at Al-Azhar, the ancient institution of higher learning, were allowed to vehemently criticize secular intellectuals.[66] This co-optation reduced the power of the radicals, but it increased the power of the more mainstream movements.[67] If Egypt's economy stagnates such that the regime finds itself seeking greater popular legitimacy, it may allow Islamists additional influence.

Implications

Leadership change within Egypt's elite may alter the emphasis of Egypt's foreign policy, but not its direction. A leader other than Mubarak may be more willing, and more able, to go outside the narrow consensus in the current elite, shaping Egypt's policy rather than simply implementing agreed-upon goals. A shift outside the current power base to an Islamist regime would represent a far more fundamental change, but Islamists, too, would face limits on their freedom of action because of Egypt's military weakness.

Political liberalization is likely to founder, while economic reform will probably be limited. Even though support for liberalization may be considerable, there is no organized base for it. The current regime has successfully portrayed itself to other elites as the only bulwark against the Islamists and will

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sure from the Egyptian government and a broader belief that contacts legitimated the very forces Washington opposed. Gerges, "End of Islamist Insurgency," 606.

[63] Gerges, "End of Islamist Insurgency," 592.

[64] Ibid., 603–604; Alterman, "Egypt: Stable, but for How Long?" 110–112.

[65] Gerges, "End of Islamist Insurgency," 600–601.

[66] Steven Barraclough, "Al-Azhar: Between the Government and the Islamists," *Middle East Journal* 52 (Spring 1998): 239–245.

[67] Gerges, "End of Islamist Insurgency," 593–594; Alterman, "Egypt: Stable, but for How Long?" 108, 112.

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not hesitate to play up this concern if challenges to its rule mount. Because the regime relies heavily on business interests, economic changes are likely to avoid a return to the state-dominated policies of the past. That said, reform is also likely to avoid measures that threaten the existing businesses' position, even if this results in reduced competition and productivity.

Egypt's close relationship with the United States rests on thin foundations. Cooperation on counterterrorism is excellent, but this is usually conducted behind the scenes. Because the Egyptian populace and potential opposition figures are not supportive, and because many elites are, at best, lukewarm about ties to Washington, the regime may be tempted to distance itself from Washington should it find itself in a domestic crisis. This temptation will be acute if Palestinian-Israeli tension is high and the United States is seen as close to Israel. Efforts to liberalize the regime as a means to offset and channel dissent could lead to increased criticism of the U.S.-Egyptian relationship.

The regime's co-optation of mainstream Islamists also has far-reaching foreign policy implications. Many traditional Islamic authorities now have a degree of autonomy from the government that they use to press it on issues of religious importance, particularly social issues.[68] They may use this autonomy to press for changes in Egypt's foreign policy, particularly with regard to the peace negotiations or relations with the United States in high-profile issues.

The "Cold Peace" with Israel could get even colder. Peace for Egypt is necessary for good relations with the United States, and the limited quality of the Egyptian military makes a military confrontation difficult to conceive. However, the regime may become less supportive of concessions by the Palestinians, use more bellicose rhetoric, reduce economic ties, or otherwise distance itself from Israel.

A hardening of positions toward Israel could lead Egypt to renew its quest for weapons of mass destruction (WMD). Egypt is believed to have a stockpile of chemical agents and has not signed the Chemical Weapons Convention, although it is not believed to have a significant biological or nuclear program.[69] Increased tension with Israel, however, could cause Cairo to seek WMD as an offset to Israel's conventional military superiority.

Preparing for Regime Change

As the above analysis suggests, the most probable scenarios are variations on current themes. Sons will succeed fathers, or members of the same power base will take the helm if a current leader dies or becomes ill. The potential for change, however, is quite large. Leaders are often out of touch with the population as a whole, and opposition voices have little say. As a result, a shift in ruling

[68] For a review, see Barraclough, "Al-Azhar," 239–245.

[69] Center for Nonproliferation Studies, Monterey Institute of International Studies, "Nuclear, Biological, Chemical, and Missile Capabilities in the Middle East," accessed at http://cns.miis.edu/research/wmdme/egypt.htm, 29 January 2001.

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elites could lead to dramatic changes in a country's policy. Indeed, given the centralization of power in most Arab states, even a shift from one member of an existing power elite to another could have important implications for U.S. policy. Geopolitical realities and social constants will limit change or shape it to some degree, but dramatic shifts in a country's alignment and policies are possible.

This final section summarizes several of the most pressing concerns and dangers that emerge from the above cases. It identifies signposts that would suggest that regime change may occur. It then offers actions to shape the environment to prevent unfavorable regime change, and if this cannot be averted, proposes hedging actions to minimize any dangers.

Potential Risks and Opportunities

Leadership change in the Middle East raises the risks of several dangers. Among the most important, for friends as well as adversaries, are the difficulties inherent in consolidating power. Even if there is no change in a regime's power base, a new leader will still have to establish his supporters in power while minimizing the influence of potential challengers. During this interim period, a leader's ability to make policy will probably be circumscribed. Moreover, new leaders will be focused primarily on domestic politics and may be reluctant to take risks on foreign policy. Given that open ties to the United States are questioned by their populace, new leaders may hesitate to risk unpopularity by cooperating with U.S. initiatives.

More generally, U.S. alliances and positive developments in the peace negotiations rest on a thin foundation. Leaders who are not beholden to public opinion are better able to make concessions to Israel or at least moderate their government's policies. If liberalization occurs in Egypt or Saudi Arabia, to say nothing of an increase in Islamist influence, then anti-U.S. and anti-Israeli policies are likely to gain strength.[70]

The inexperience of some leaders also poses risks. Although Crown Prince Abdullah is highly experienced, Bashar al-Assad remains a neophyte. Future leaders of Saudi Arabia after Abdullah, and the successors to Mubarak or Saddam, may be more skilled in domestic politics than in foreign affairs. This may lead simply to missteps and clumsiness, but it also could have far graver consequences. Leaders may overestimate their military forces' strength, trust unduly in international support, believe they can intimidate their adversaries, or otherwise have misperceptions that might lead to conflict.

Democratization is also a mixed proposition. Successful liberalization and power sharing raise the prospect for more-stable regimes. However, many populaces in the Middle East are hostile to the United States, and if they gain a greater voice their regimes, are likely to face pressure to reduce ties to Washington. Islamists, in particular, are often the best organized and best prepared to take advantage of a more open political system.

[70] Green, "Leadership Succession," 6.

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Recommendations

The United States should anticipate potential changes to current assumptions about regime stability and shape and hedge accordingly.

Anticipating changing assumptions. Planning for regime change requires recognizing when assumptions about how a regime will behave are vulnerable. Obviously, analysts should continue to follow the changing fortunes of individual leaders to best determine who may take power should a current leader die or become incapacitated. Anticipating more-fundamental shifts is far more difficult. Predicting a coup, revolution, or other forms of rapid and radical regime change is exceptionally difficult. However, certain indicators suggest that a country is likely to face regime instability, including:

- The presence of partial democracy. In general, mature democracies and established autocracies are fairly stable. Regimes that are in transition, however, often face unrest and instability and are more likely to go to war. If Egypt, Syria, or other regional states liberalize, they may be vulnerable to sudden changes.[71]
- A crisis among the elite. Many revolutions begin after a split in the existing elite. As a result, regimes may find it difficult to repress or co-opt dissent, providing opportunities for revolutionaries.
- The spread of populism. Even if democracy does not spread, elites may rely more on populism to mobilize support for their rule. For many years, politics in the Middle East was the purview of elites such as military leaders, security officials, wealthy landowners, and businessmen. If leaders appeal more and more to the people for support, popular views, which are often at odds with those of current regimes, will matter more.

Shaping and hedging. The United States should also consider actions to shape the environment to make any regime change more favorable and, should that not be practical, hedge against unfavorable changes.

Given the importance of regime change, it is tempting for the United States to try to intervene in the process. Unless the United States is willing to intervene decisively, as it did in Iraq, it often has little influence over succession in most countries and, in general, lacks enough information to use what little influence it possesses. Pressure may backfire, leading to the rise of anti-U.S. leaders.[72]

[71] *State Failure Task Force Report: Phase II Findings* (Washington, DC: Science Applications International Corporation, 1998), 19–22; Edward D. Mansfield and Jack Snyder, "Democratization and the Danger of War," *International Security* 20 (Summer 1995): 5–38.

[72] Green, "Leadership Succession," 3–5. Indeed, information is often lacking among Middle Eastern elites. As Jerrold Green notes, "No one was more surprised at the election of President Mohammad Khatami than was Khatami himself."

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Washington should also consider increasing contacts with leaders who are out of favor and factions that are out of power but enjoy considerable support. Focusing exclusively on the current power set risks being blindsided should dramatic change occur, as it did in Iran. Islamist groups deserve particular attention. Many of these groups are hostile to the United States, but dialogue is possible with some members, and indeed necessary, if many of the stereotypes and conspiracy theories are to be dispelled. Establishing contacts with nonregime figures, of course, will anger the regime, a tricky balance to negotiate.

The United States should also focus more on cultivating public opinion. The current U.S. focus on elites will be less fruitful in the coming years. The possibility that publics may play a greater role in decision making than in the past is currently a danger for the United States because of the hostile perceptions many Arab publics hold toward U.S. policy. Washington should attempt a media strategy that explains U.S. positions, going beyond the standard Western outlets and focusing on Arab satellite television stations and newspapers. The United States should also consider increased student and military exchanges to improve familiarity with the United States.

The U.S. military should consider a diverse and redundant basing structure and access arrangements as a hedge against instability or change in one country. Given that many countries are vulnerable to sudden change, and almost all may at some point hesitate to provide access to placate domestic opinion, having many options is necessary. States such as Saudi Arabia and Egypt, where domestic and opposition opinion appears firmly against ties to the U.S. military, are of particular concern.

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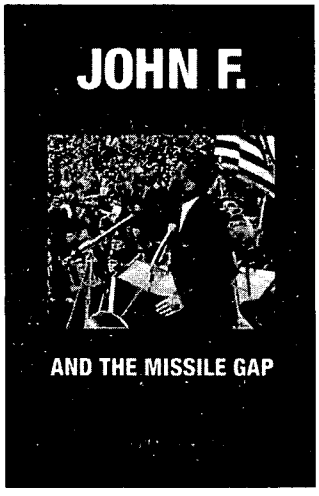

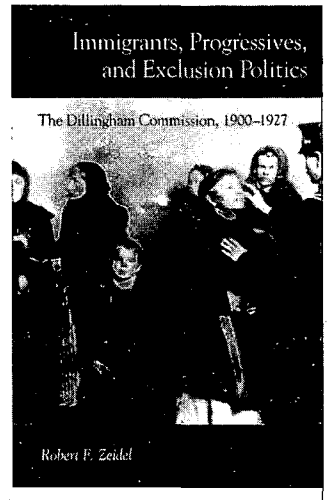

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State Secrets and Executive Power

WILLIAM G. WEAVER
ROBERT M. PALLITTO

To cover with the veil of secrecy the common routine of business is an abomination in the eyes of every intelligent man and every friend to his country.

—Patrick Henry

For those of us defending the government from the range of legal assaults, openness is like AIDS—one brief exposure can lead to the collapse of the entire immune system . . . but we can always play the trump card—state secrets—and close down the game.[1]

—Anonymous U.S. Government Attorney

Assertions of the need for secrecy, long associated with the activities of the executive branch, have proliferated under the administration of George W. Bush to the point where criticisms are being voiced by Republicans as well as Democrats and by members of the federal judiciary. Since the administration of Jimmy Carter, there has been a sharp increase in secrecy claims by executive branch officials, especially in the context of litigation. However, the Bush administration is extending this penchant with even greater intensity, and has been quick to raise secrecy-based objections in response to requests for information that has historically been publicly available. Secrecy claims are raised so routinely and broadly that in some cases, the administration officials involved do not even know what the allegedly secret documents contain.[2] Taken together, administration officials' statements interpreting law and their blanket

[1] Scott Armstrong, "Do You Wanna Know a Secret," *Washington Post*, 16 February 1997.
[2] Neely Tucker, "Judge Orders White House Papers' Release," *Washington Post*, 18 October 2002.

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denials of requests for documents demonstrate an intention to greatly expand the power of the executive branch to withhold information from the public, free from any kind of oversight. Moreover, federal courts have become impatient with the administration's apparent unwillingness to be diligent or accurate in its assertions of privilege; in one case, the federal district court noted that the administration had invoked a secrecy privilege 245 times, and at least one of those invocations covered a document that had already been provided in discovery by another defendant.[3]

This trend has threatening implications for the separation of powers, and executive branch officials over the last several decades have been emboldened to assert secrecy privileges because of judicial timidity and because of congressional ineffectiveness in reviewing the myriad of substantive secrecy claims invoked by presidents and their department heads. At present, it is costless for the president to assert a secrecy privilege: the overwhelming odds are that the assertion will be successful, and even if unsuccessful, the process of overturning claims of privilege is lengthy and the only potential cost of excessive claims of national security is in bad publicity.

In view of the extensions of secrecy policy undertaken by the executive branch since the attacks of September 11, 2001, an evaluation of the mechanisms of executive secrecy is particularly timely. We focus here on the most powerful privilege available to the president, the state secrets privilege, which the Supreme Court held in *United States v. Reynolds* prevents disclosure of information in court proceedings when "there is a reasonable danger that compulsion of the evidence will expose matters which, in the interest of national security, should not be divulged."[4] Despite frequent involvement by Congress in issues concerning executive secrecy, most challenges to refusals to disclose information are handled in the courts, and we believe that the state secrets privilege, a judicial creation, is now judicially mishandled to the detriment of our constitutional system.

The state secrets privilege is most often used by executive branch officials in civil court cases to protect against subpoenas, discovery motions, or other judicial requests for information. The privilege is frequently referred to as a common law privilege, which reflects its lack of grounding in positive law. And it functions like a common law rule, inasmuch as the head of a department of government need not rely on statutory authorization to raise the privilege, and may assert it on his or her own volition. But this apparent simplicity veneers significant issues of accountability and the reach of executive authority, and the privilege creates perplexing constitutional dilemmas for the courts. These dilemmas arise in two forms.

First, it is axiomatic that the Constitution is the supreme law of the land and that the common law is conditioned by the Constitution, and not the other

[3] *Int'l Action Ctr. v. United States*, Civil Action No. 01-72 (GK) (D.C., 2002).
[4] 345 U.S. 1, 10 (1953).

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way around. But the state secrets privilege reverses this understanding, for in virtually every case that pits the privilege against citizens' constitutional claims, it is the privilege that wins the encounter. The privilege seems to be ultra-constitutional, for the courts have not forced the government to disclose agency-held classified information in any case in which the privilege has been asserted, even when the basis for compulsion has been the assertion of a constitutional right. For example, the case of *Halkin v. Helms*[5] arose as a result of the National Security Agency illegally and unconstitutionally intercepting thousands of phone and electronic communications originating from hundreds of Americans. When sued, administrators invoked the state secrets privilege, and because all of the evidence that the plaintiffs needed to prove their case was in the hands of the very administrators who violated their rights and who had asserted the privilege, the case was lost.

The incentives to abuse the privilege are obvious, and herein lies the second dilemma with the privilege as it is now designed: how may the courts fulfill their constitutional duty of oversight of executive branch activity yet still meet the legitimate goals the privilege seeks to achieve? It is often asserted that the government may invoke the privilege to prevent disclosure of any classified information. In other words, the potential use of the privilege is coextensive with all of the classified material in the possession of the United States. Each year, millions of files, computer programs, intercept tapes, pieces of equipment, and a host of other items are generated and classified under statute and executive order. Virtually all observers acknowledge that overclassification is a significant problem, and this has led to some embarrassing moments for the executive branch. In 1995, for example, the Federation of American Scientists discovered that a report written in 1917, before America entered World War I, was still unavailable due to its classification. The report and five other documents from 1917–1918 still remain classified, and even legal action failed to force their disclosure.[6] And, rather infamously, administrators reasserted classification of the Pentagon Papers after the papers had already been published in *The New York Times.* Even a memo from one member of the Joint Chiefs of Staff to another member claiming that too many documents were being classified, was itself classified.[7] Such occurrences are concrete examples of Max Weber's well-known observation that the "concept of the official secret is the specific invention of bureaucracy, and nothing is so fanatically defended by the bureaucracy."[8] As former Solicitor-General Erwin Griswold noted, it is apparent "to any person who has considerable experience with classified material that there

[5] *Halkin v. Helms*, 598 F.2d 1 (D.C. Cir., 1979).

[6] Federation of American Scientists, "Central Intelligence Agency Refuses to Release Oldest U.S. Classified Documents Sought in Litigation," 30 March 1999, accessed at http://www.fas.org/sgp/news/jmpoldest.html, 5 March 2003.

[7] U.S. Congress. House. Committee on Government Operations, *U.S. Government Information Policies and Practices. Part 1: The Pentagon Papers.* 92nd Cong., 1st sess., 1975, 20.

[8] H. Gerth and C. Wright Mills, eds., *From Max Weber* (New York: Oxford University Press, 1967), 233.

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is massive overclassification and that the principal concern of the classifiers is not with national security, but rather with governmental embarrassment of one sort or another."[9] Accordingly, the Commission on Protecting and Reducing Government Secrecy began their final report with the observation that "secrecy is a form of government regulation," and that like any other form of regulation, it is subject to abuse.[10]

So the dilemma for judges is how to make certain that legitimate interests are protected while trying to eliminate abuse of power in the hidden bureaucracy. As presently formulated, the privilege is ill-equipped to balance between these two goals, and it is our contention that the courts have unwisely acquiesced to executive power on this matter. As Charles Alan Wright, the distinguished commentator on federal courts and lead counsel for President Richard M. Nixon in the appeal of *United States v. Nixon*,[11] observed, "It was long a matter of dispute whether judges were entitled to overrule executive determinations that information qualified for the privilege and the scars of this battle are still visible in the procedures courts have devised to cover their de facto surrender on this crucial question."[12]

At the root of the issue over the state secrets privilege are contested views about the limits of judicial review of administrative actions and intrusions by judges into the complex worlds of intelligence gathering and analysis and law enforcement. Although little studied, publicity, public access, and openness work to delimit the arbitrary exercise of administrative discretion. As Justice Louis Brandeis famously noted, "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."[13] Likewise, Kenneth Culp Davis held that "openness is the natural enemy of arbitrariness and a natural ally in the fight for justice";[14] all of Davis's "seven instruments" for structuring administrative discretion to avoid arbitrary use of power begin with openness as a predicate.[15] And almost half a century ago, Francis Rourke observed, "Compared to publicity . . . internal checks upon bureaucratic misbehavior . . . have but negligible value."[16] The power to expose agency misdeeds may well be the most important method of controlling executive branch activity, and the courts provide the most formal and routinized means to such control.

[9] Erwin Griswold, "Secrets Not Worth Keeping: The Courts and Classified Information," *Washington Post*, 15 February 1989.

[10] U.S. Congress. Senate. *Report of the Commission on Protecting and Reducing Government Secrecy.* S. Rpt. 105-2. 105th Cong., 2nd sess., 1997, xxi.

[11] *United States v. Nixon*, 418 U.S. 683 (1974).

[12] Charles Alan Wright and Kenneth W. Graham, *Federal Practice & Procedure: Federal Rules of Evidence*, Volume 26 (St. Paul, MN: West Publishing, 2001), 498.

[13] Louis D. Brandeis, *Other People's Money* (New York: F.A. Stokes, 1914), 92.

[14] Kenneth Culp Davis, *Discretionary Justice: A Preliminary Inquiry* (Baton Rouge: Louisiana State University Press, 1969), 98.

[15] Ibid., 98–120.

[16] Francis E. Rourke, "Secrecy in American Bureaucracy," *Political Science Quarterly* 72 (December 1957), 542.

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Courts, though, seeking to exercise such control over intelligence and law enforcement agencies inevitably confront those agencies' tendencies toward secrecy. J. Edgar Hoover, for example, claimed that if "we [are] to fully discharge the serious responsibilities imposed upon us, the confidential character of our files must be inviolate."[17] And in support of Mr. Hoover's view, Justice Tom Clark, in dissent in *Jencks v. United States*, predicted that the majority decision of that case would result in disaster for the United States: "Those intelligence agencies of our Government engaged in law enforcement may as well close up shop, for the Court has opened their files to the criminal and thus afforded him a Roman holiday for rummaging through confidential information as well as vital national secrets."[18] These statements tap into a deep-rooted sentiment in the intelligence and law enforcement communities: to do their jobs properly, they must be free of meddling by courts, Congress, and the public. Thus, it is unsurprising that litigation-related requests for classified documents are routinely met with refusal based on broad claims of a need for secrecy. Such refusal, though, seems to have reached new heights in the current Bush administration, where even routine requests for information by Congress and the courts are refused or stonewalled.

But even those who advocate and practice close guarding of information sometimes see the risks posed by state secrecy. Woodrow Wilson, whose own administrations engaged in zealous secrecy, warned that "government ought to be all outside and no inside [for] corruption thrives in secret places [and] it [is] a fair presumption that secrecy means impropriety."[19] So when agencies violate constitutional rights or engage in criminal activities, there are strong reasons for judicial, political, and public access to agency information. The only efficient means to such exposure is through the courts. Although Congress may indeed investigate isolated cases of abuse where the privilege is claimed, unlike the federal courts, it certainly cannot subject administrators to the level and frequency of scrutiny necessary to systematically discourage abuse.

In the state secrets privilege, we have a most profound concrete example of the conflict between two political survival impulses. On the one hand, presidents and their advisors have always advocated, and presumably always will advocate, broad powers of secrecy. Agency officials argue, and courts often agree, that judges and lay people are incompetent to assess the danger that the release of information may pose to national security; the invocation of "national security" gives strong, almost talismanic, force to claims of agency expertise. After all, who wants to argue *against* national security or even appear to be doing so?

On the other hand, our liberal-democratic political tradition is defined in part by openness in government and checks on the powers of each of its three

[17] Quoted in *Jencks v. United States*, 353 U.S. 657 (1957), 682.

[18] Ibid., 681–682.

[19] William E. Leuchtenburg, ed., *The New Freedom* (New York: Prentice-Hall, 1961), 84.

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branches, and there are powerful arguments for judicial oversight of executive branch action even if national security is involved. First, when agencies violate the constitutional rights of citizens and commit crimes, it is perverse and antithetical to the rule of law that they may avoid judgment in court and exposure of these activities to the public by refusing to disclose inculpatory information. Second, if the privilege protects the executive and agencies from investigation and judicial power, then the incentive on the part of administrators is to use the privilege to avoid embarrassment, to handicap political enemies, and to prevent criminal investigation of administrative action. In these circumstances, the privilege may have the effect of encouraging or tempting agencies to engage in illegal activity. Third, the privilege, as now constructed, obstructs the constitutional duties of courts to oversee executive action. Oversight of executive branch activity is notoriously difficult, and even more so in areas where state secrets exist. The privilege, as now employed, is tantamount to courts capitulating in their oversight function. As we discuss below, judicial intervention in activities undertaken by intelligence agencies is almost nonexistent. Although the privilege is crucial to national security, it is also a bane to constitutional government, and we believe that the judiciary must carefully and selectively exercise oversight of administrators to prevent abuse of the citizenry and the Constitution and the weakening of the rule of law.

In recent years, the privilege has protected the government from citizen litigants in a variety of cases. For example, it prevented disclosure in the following matters:

- The unconstitutional and illegal intercept of thousands of telephone conversations and electronic transmissions by American citizens.[20]
- The firing of an executive branch employee and whistleblower seeking to alert Congress that the Central Intelligence Agency (CIA) and other intelligence agencies had systematically deceived Congress in an effort to manipulate it into passing legislation and funding particular programs.[21]
- Initiation of Federal Bureau of Investigation (FBI) surveillance of a twelve-year-old boy that then continued for years simply because the boy received mail from foreign countries.[22]
- CIA recruitment of a banker who unknowingly became entangled in illegal money laundering operations for the Agency; when the banker discovered the nature of the work and wanted out of the operation, the Agency allegedly destroyed his career and threatened his family with harm.[23]
- Alleged racial and sexual discrimination by government employees working in security agencies.[24]

[20] *Halkin v. Helms.*

[21] *Barlow v. United States*, Cong. Reference No. 98-887X (Court of Federal Claims, 2000).

[22] *Patterson v. FBI*, 893 F.2d 595 (3rd Cir., 1990).

[23] *Maxwell v. First National Bank of Maryland*, 143 F.R.D. 590 (Dist. of Maryland, 1991).

[24] *Molerio v. Federal Bureau of Investigation*, 749 F.2d 815 (D.C. Cir., 1984); *Sterling v. Tenet* Civil Action No. 01-CIV-8073 (S.D. New York, 2002); *Tilden v. Tenet*, 140 F. Supp 2d 623 (E.D. Virginia, 2000).

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- Unilaterally reneging on contracts made between security agencies and agents.[25]
- Harassment of U.S. citizens, allegedly including illegal wiretapping, break-ins, psychological operations designed to cause mental anguish and suffering, and threats.[26]

On occasion, the privilege may also serve to shield criminal defendants from prosecution, as in the cases of some of those charged in the Iran/Contra investigation of the 1980s. The most serious charges against the defendants, as well as all charges against one principal defendant, were dismissed when the administrations of Ronald Reagan and George H.W. Bush refused to allow alleged national security–related information to be introduced into evidence at trial. As the final report of the independent counsel noted, the affair

> exposed structural problems in the . . . law when central conspiracy counts had to be dismissed because of the Reagan Administration's refusal to declassify information deemed necessary to a fair trial of the case. This raised serious questions about whether the Reagan Administration—which in the Iran/Contra matter had sought the appointment of Independent Counsel to investigate and prosecute possible crimes because of an appearance of conflict of interest—in fact had the final say in determining what crimes could be tried.[27]

In a postscript to the Iran/Contra affair, a dispute arose over the outgoing Reagan administration's plan to destroy backup e-mails that were discovered in the course of the investigation.[28] These backup files documented communications among National Security Council (NSC) members and key participants in the covert financing of the Nicaraguan Contras and in the Iranian hostage matter. The original e-mails had been destroyed, and so the backup files became indispensable to establishing facts helpful to the Iran/Contra prosecution, insofar as they showed knowledge and participation by parties who had previously denied involvement.

Thus, when the outgoing administration sought to destroy these records, a private archival association went to court to prevent the planned destruction. They argued that the portions already made public demonstrated lying by government officials, and that the remaining undisclosed records were, therefore, particularly important for the public to access. A protracted legal battle ensued, in which the government spent seven years and millions of taxpayer dollars defending its plan to destroy the records. The litigation ended in 1996, during the

[25] *Doe v. United States*, No. 96-397C (Court of Federal Claims, 1997); *Guong v. United States* 860 F.2d 1063 (Federal Cir., 1988).

[26] *Black v. United States*, 62 F.2d 1115 (8th Cir., 1995).

[27] Lawrence E. Walsh, *Final Report of the Independent Counsel for Iran/Contra Matters: Volume I: Investigations and Prosecutions* (Washington, D.C.: U.S. Government Printing Office, 1993), 122.

[28] See Scott Armstrong, "The War Over Secrecy: Democracy's Most Important Low-Intensity Conflict" in Athan Theoharis, ed., *A Culture of Secrecy: The Government Versus the People's Right to Know* (Lawrence: University Press of Kansas, 1998).

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administraton of Bill Clinton, when the U.S. Court of Appeals for the D.C. Circuit accepted the administration's surprising argument that the NSC was not an agency (and therefore not subject to the disclosure requirements of the Federal Records Act), but rather a group of presidential advisors. The eventual resolution of the lawsuit in favor of the executive branch of the government demonstrated the truth of the observation, "What does not exist is de facto secret."[29] In these Iran/Contra matters, the damage to the rule of law was double: high-level criminal defendants went unprosecuted and the independent counsel was stripped of power and left as a meaningless formality as the President decided when and where the investigation would end.

Likewise, President George H.W. Bush's refusal to declassify material led to dismissal of all charges against the CIA Costa Rican station chief allegedly involved in the illegal Iran/Contra activity. One of the troubling features of the invocation of the privilege in these cases is that much of the information withheld was already in the public domain through press leaks or in the possession of the independent counsel through investigation. This points up a curious aspect of the privilege: it allows the government to withhold introduction of evidence even if that evidence is known to the public or in the possession of the litigant seeking introduction.

Although the Iran/Contra investigation was a criminal matter, the privilege is most often used in civil cases, where it frequently spells the end of litigation once it is invoked. The power of the privilege, a power that thwarts even constitutional mechanisms of accountability and redress, makes it worthy of investigation, although political scientists have virtually ignored it.

Origins of the State Secrets Privilege

A fundamental problem in understanding the state secrets privilege is disentangling it from the more familiar executive privilege. Executive privilege, unlike the state secrets privilege, is a constitutional doctrine founded in the separation of powers. It is a *qualified* privilege designed to shield executive communication amongst the president and counselors from predation by partisan members of Congress and a prying public. Its goals are to foster frank and open discussion between a president and his or her advisors without the fear that those discussions will be made public to the embarrassment of the discussants. In short, it prevents harassment of the executive by the coordinate branches. In contrast, the state secrets privilege is an *absolute* privilege and relies more on practicality than constitutional principle for its justification. Although judges occasionally ground the privilege in separation of powers, the ultimate reason for upholding its use is on the practical grounds that it is necessary to the survival of the state.

Claims that the state secrets privilege derived from common law and the U.S. Constitution are only mediately plausible. Sometimes it is characterized

[29] Ibid., 160.

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as pre-constitutional, even pre-legal, and as arising from the raw fact that countries have a responsibility to prevent becoming instruments of their own destruction. This contention is vaguely and inchoately recognized in the literature, although some commentators briefly trouble themselves to expand on this point. As one commentator explains, "The state secrets privilege is the most basic of government privileges—it protects survival of the state, from which all other institutions derive."[30] And Justice George Sutherland noted in 1936 that the power to ensure national survival is not one granted by the Constitution, but is a "necessary concomitant of nationality."[31] This claim, that power to secure the state is pre-constitutional and acquired naturally without authorization of Constitution or statute, is hardly self-evident. There are strong currents of thought in our political tradition suggesting that *all* political authority derives from the Constitution, and the Constitution, with but one exception, says nothing about secrecy powers. Congress has never adopted the state secrets privilege in any statute granting authority to the executive branch, and a major effort to define and incorporate the privilege in the Federal Rules of Evidence failed in the early 1970s.[32]

Because the privilege is usually justified by practicality rather than pedigree, its origins are somewhat obscure and confused. This confusion is made worse because historically, presidents have had little incentive, and much disincentive, to disentangle these separate threads. The disincentive derives from the fact that it is in the executive's interest to infect all withheld information, where possible, with allusions to national security. Indeed, attorneys general and others frequently describe the state secrets privilege as a component of executive privilege.[33] So by keeping the lines between executive privilege and the state secrets privilege obscure, presidents have attempted to expand the reach and potency of their powers to withhold information.

In hindsight, we can tease out two major lines of provenance for the state secrets privilege that intersect in *Reynolds*, the only time the U.S. Supreme Court ruled on the privilege. The first line is founded in the formulation of the U.S. Constitution and in the actions of the first several presidents, and is more properly considered executive privilege rather than the state secrets privilege. But because presidents have never attempted to distinguish between the two privileges, these early executive actions prepared the ground for later assertions of privilege for national security matters. The second source for the privilege is found in United Kingdom law, law that the U.S. Supreme Court explicitly adopted, if in a slightly modified form, in *Reynolds*.

[30] Brian Z. Tamanaha, "A Critical Review of the Classified Information Procedures Act," *American Journal of Criminal Law* 13 (Summer 1986), 318.

[31] *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936), 318.

[32] See Charles Alan Wright and Kenneth W. Graham, "Rejected Rule 509" in *Federal Practice and Procedure*, Volume 26 (Minneapolis, MN: West Publishing, 2002), §§5611–5672.

[33] For example, John R. Stevenson and William H. Rehnquist, "The President's Executive Privilege to Withhold Foreign Policy and National Security Information," Department of State and Department of Justice, Office of Legal Counsel Memorandum, 8 December 1969.

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Political Origins of the State Secrets Privilege

Concern for the need for secrecy is evident even in the structure and actions of the Continental Congress, where the Committee of Secret Correspondence refused to transmit information to the rest of the Congress because they found by "fatal experience, that the Congress consists of too many members to keep secrets."[34] And the Framers of the Constitution debated the need for secrecy in certain cases. In discussing whether to allow one or both houses of Congress to withhold information from the public, Elbridge Gerry and Roger Sherman proposed a constraint that would allow for secrecy of material relating to "treaties & military operations." Contrary to this view, James Wilson thought that "the people have the right to know what their Agents are doing or have done, and it should not be in the option of the Legislature to conceal their proceedings."[35] This debate yielded what became Article I, Sec. 5, Cl. 3, of the U.S. Constitution, which explicitly gives Congress discretion to keep secrets: "Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy." This is the only constitutional provision conferring a power of secrecy on a government body or official.

Nevertheless, concerning the power of presidents to engage in secrecy, John Jay held, in *The Federalist, No. 64*, that "it seldom happens in the negotiation of treaties . . . but that perfect *secrecy* and immediate *dispatch* are sometimes requisite . . . and there doubtless are many [people] who would rely on the secrecy of the president, but who would not confide in that of the Senate, and still less in that of a large popular assembly."[36] It was not long until Jay's observations underwent a test. In 1792, President George Washington was negotiating an agreement with Algiers that he certainly did not want the French to learn about, yet Senator Ralph Izard, at a dinner party, brought up the negotiations. Thomas Jefferson reported that Izard, "sitting next to [Washington] at table on one hand, while a lady . . . was on his other hand and the Fr[ench] minister next to her . . . got on with his communication, his voice kept rising, and his stutter bolting the words out loudly at intervals, so that the minister might hear if he would."[37]

Three weeks later, with Izard's breach fresh in his mind, Washington called his closest advisors together to discuss efforts by members of the House to investigate the decimation of General St. Clair's army by the Indians. At the meeting, Washington offered no opinion about the power or limits of Congress to investigate executive branch activities, "for he had not thought upon it, nor

[34] Quoted in *Halperin v. Central Intelligence Agency*, 629 F.2d 144 (D.C. Cir., 1980), 157.

[35] James Madison, *Notes of Debates in the Federal Convention of 1787* (New York: Norton, [1787], 1987), 433–434.

[36] Clinton Rossiter, ed., *The Federalist Papers* (New York: New American Library, 1961), 392.

[37] Charles T. Cullen, ed., *The Papers of Thomas Jefferson*, Volume 23 (Princeton, NJ: Princeton University Press, 1990), 11 March 1792, 257.

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was acquainted with subjects of this kind . . . [But he] could readily conceive there might be papers of so secret a nature as they ought not to be given up."[38] Washington, at the time, did not locate this right of refusal in constitutional or other legal considerations, and after his advisers discussed the matter, they too advanced political, rather than legal, reasons for the power of the president to withhold information. Jefferson reports that the advisers concluded that "the Executive ought to communicate such papers as the public good would permit, and ought to refuse those the disclosure of which would injure the public," but no authority for this position was asserted.[39]

Washington did not actually withhold information from Congress until 1796, when he resisted a request from the House of Representatives for the instructions given to the U.S. minister to Great Britain concerning the Jay Treaty. He prefaced his refusal with the remark that he had a "constant endeavor to harmonize with the other branches," but went on to say that because the House had no constitutionally defined function in the making of treaties, the "boundaries fixed by the Constitution between the different departments should be preserved . . . [and this] forbids compliance with your request."[40] The precedent thus established, virtually every president since has justified withholding information from Congress on the same separation of powers grounds. The instance prompting Washington's refusal was squarely in line with situations contemplated by Jay in *The Federalist, No. 64*, but subsequent presidents broadened the power to encompass withholding information from the public and Congress.

The power to withhold information in the face of a judicial order developed at around the same time as did the power to withhold information from Congress. The first time this issue arose was in the trial of Aaron Burr for treason, where Justice John Marshall issued a subpoena *duces tecum* against President Jefferson to produce copies of specified military orders and a letter written to Jefferson by General James Wilkinson. Jefferson refused to comply with the subpoena, claiming that the "letter contains matter which ought not be disclosed."[41] Marshall agreed that information truly detrimental to the United States should not be publicly disclosed, but implied that the decision over what information to withhold was one for the judge, not the executive.[42] Marshall had no doubt that a subpoena could be issued against the President, but expressed concern over whether the President could be compelled to disclose the letter to Burr. On the basis of this incident, Jefferson established the proposition, later to become dogma with succeeding presidents, that the president may withhold information in the face of a judicial order.

[38] Ibid., 31 March 1792, 262.

[39] Ibid., 2 April 1792, 262.

[40] U.S. Congress. House. *"British Treaty," Document #114, Foreign Relations.* 4th Cong., 1st sess., 30 March 1796.

[41] *United States v. Burr*, 25 F. Cas. 30 (Cir. Court of Virginia, 1807), 37.

[42] Ibid.

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This dogma gained more concrete, if somewhat indirect, support from the judiciary in the case of *Totten v. United States*, where the U.S. Supreme Court faced the issue of whether secret contracts for espionage services could be sued upon by a party alleging breach of payment. Justice Stephen J. Field, writing for a unanimous court, opined that a "secret service, with liability to publicity . . . would be impossible," and that it "may be stated as a general principle, that public policy forbids the maintenance of any suit in a court of justice, the trial of which would inevitably lead to the disclosure of matters which the law itself regards as confidential."[43] However, this short opinion did not squarely address the issue of executive branch power to withhold information in the face of judicial requests. In another tantalizing case, *Firth v. Bethlehem Steel Co.*,[44] a federal district court allowed attorneys for the United States to intervene in a private suit to assert the "military" privilege to have testimony stricken from the record and to prevent its reintroduction by other means.

But until recently, courts did not undertake to disentangle executive privilege from the power to withhold military and state secrets from judicial proceedings. Washington's and Jefferson's refusals to transmit information to Congress and the courts are better thought of as exercises of executive privilege, while the refusal in *Totten* arguably is an example of state secrets privilege. After *Totten*, though, as executive branch resources and power grew, there developed a judicial impatience with frivolous administrative assertion of the state secrets privilege.

In the little-noticed cases of *District of Columbia v. Bakersmith*[45] and *King v. United States*,[46] courts confronted assertion of the state secrets privilege for quotidian activities of the executive branch. *Bakersmith* concerned a request for inspection papers and other documents about a particular culvert in Washington, D.C., but the city, in denying the request, asserted the state secrets privilege, saying, "It is laid down by the authorities as a well-established principle of law that official transactions between the heads of the departments of the government and their subordinate officers are in general treated as secrets of State."[47] The court did not reach the claim of privilege, but simply stated in the first sentence of the opinion that the right to inspect municipal public documents is undoubted.

And in *King*, a criminal defendant sought to examine federal agents as to their efforts to suborn perjury and manufacture evidence. The U.S. attorney objected, asserting the state secrets privilege, to which the Fifth Circuit Court of Appeals responded: "We are clear that the conversations of government detectives and other agents with witnesses, with the purpose and effect of inducing and influencing the evidence of such witnesses, do not rise to the dignity of

[43] 92 U.S. 105 (1875), 106.
[44] 199 F. 353 (1912).
[45] *District of Columbia v. Bakersmith*, 18 App. D.C. 574 (1901).
[46] *King v. United States*, 112 F. 988 (1902).
[47] *Bakersmith*, 577.

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state secrets."[48] *King* and *Bakersmith* are the beginnings in the United States of the legal differentiation between executive and state secrets privileges, a differentiation that has only recently gained any degree of clarity. These cases indicate the judiciary's incipient willingness to distinguish between the two privileges, but case law in the United States proved too thin a resource to fully explain this distinction, and so the U.S. Supreme Court turned to the law of the United Kingdom and the development of the doctrine of "crown privilege."

Legal Origins of the State Secrets Privilege

The state secrets privilege derives from crown privilege as it developed in the law of England and Scotland. The beginnings of crown privilege in English and Scots law are unclear, but probably arise in the prerogative rights of the king and queen. William Blackstone noted in his *Commentaries* that "the duty of a Privy Counselor appears from the oath of office [to require the Counselor] to keep the King's counsel secret . . . [and] to withstand all persons who would attempt the contrary."[49] This duty logically extended to refusal to comply with judicial requests for information, and a 1775 case arising in India was one of the first to question executive authority to withhold sensitive documents from courts and the public. In the *Trial of Maha Rajah Nundocomar*, a case overlooked by commentators on executive privileges, a court called in a secretary to Governor General Warren Hastings in India to produce the books of the Council to the East India Company. Hastings instructed the secretary to refuse delivery of the books to the court, asserting that they contained "secrets of the utmost importance to the interest, and even to the safety of the state." Unimpressed, the court said that it would be improper to subject the books to "curious and impertinent eyes; but, at the same time . . . [h]umanity requires [that evidence in the hands of the state] should be produced, when in favour of a criminal, justice when against him."[50] The court ended by lecturing Hastings, saying that "where justice shall require copies of the records and proceedings, from the highest court of judicature, down to the court of Pie-Powder," magistrates have the power to compel disclosure. Despite the warm rhetoric, in virtually all reported cases in British courts, judges refused to compel production of the requested documents when the Crown asserted that withholding the documents was in the public interest. And in what for many years was taken to be the classic phrasing of the law on this issue, Chief Baron Pollock, in his speech in *Beatson v. Skene*, said:

> We are of the opinion that, if the production of a state paper would be injurious to the public service, the general public interest must be considered paramount to

[48] *King*, 996.

[49] J.W. Ehrlich, ed., *Blackstone's Commentaries on the Laws of England* (San Carlos, CA: Nourse Publishing Co., 1959), 62.

[50] 20 State Trials 923 (1775), 1057.

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> the individual interest of a suitor in a court of justice. . . . It appears to us . . . that the question, whether the production of the documents would be injurious to the public service, must be determined not by the judge but by the head of the department having the custody of the paper.[51]

Duncan v. Cammell, Laird and Co., Ltd., which hewed to the line announced in *Beatson*, became the chief modern case on the issue of crown privilege. In that case, family members of submariners killed while putting the submarine Thetis through trials sued the manufacturer of the submarine and sought discovery of blueprints of the craft and other sensitive documents. The Crown asserted privilege to protect the documents, and the Lords held that "the approved practice . . . is to treat ministerial objections taken in proper form as conclusive."[52] The holding of *Duncan* conferred absolute authority on the executive to withhold documents from disclosure in judicial proceedings.

In 1953, at the height of the McCarthy era, the U.S. Supreme Court squarely faced the state secrets privilege for the first time. In *Reynolds*, the family members of civilians who died in a plane crash while testing secret government electronic equipment sued the United States for money damages. The relatives sought documentation from the government relating to the flight and the crash. The government refused to produce the documents, and when ordered to deliver them to the judge for *in camera* inspection to verify that their disclosure would cause harm to national security, the Secretary of the Air Force ignored the order. The court then entered judgment for the families, and the Air Force appealed. The U.S. Supreme Court, in search of guidance, seized on *Duncan.* With almost no examination of the case or the precedents it relied on, the Court adopted the framework of the *Duncan* ruling nearly *in toto.*

Setting requirements almost verbatim from *Duncan*, the Court held that: first, the state secrets privilege "belongs to the Government and must be asserted by it"; second, it should not be "lightly invoked"; third, a claim of privilege must be formally made by the head of a department after "actual personal consideration"; and fourth, the judge must determine if the claim is appropriate, "yet do so without forcing a disclosure of the very thing the privilege is designed to protect."[53] The first and third conditions are merely procedural, and the second condition is a standardless precatory statement. Obviously, only the fourth condition presents substantial problems, and it is a perplexing rule for lower courts to interpret. It is unclear, for example, why the lowliest private with a security clearance is held more trustworthy than federal judges to handle classified information. The clear message of the *Reynolds* ruling is that courts are to show utmost deference to executive assertions of privilege. The Court did write that judicial "control over the evidence in a case cannot be abdicated to the caprice of executive officers," but also that in cases where administrators

[51] 5 Hurlst. & N. 838 (1860), 853.
[52] [1942] A.C. 624 (1942), 641.
[53] *United States v. Reynolds*, 8.

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make a facial showing of potential harm to national security the "court should not jeopardize the security which the privilege is meant to protect by insisting upon an examination of the evidence."[54] The Court refused the *de jure* rule of *Duncan* that executive assertion of the privilege is conclusive on the courts, but reached that result *de facto* by modeling the privilege after the procedures described in *Duncan.*

The reliance in *Reynolds* on the reasoning in *Duncan* is improvident in two important respects. First, in Great Britain, there was at the time virtually no distinction between assertion of crown privilege for state secrets and assertion to protect lesser important executive documents. In Great Britain, separation of powers is ill-defined and occupies a relatively less important role in the British Constitution than in that of the United States, and the Supreme Court's adoption of the *Duncan* scheme fails to recognize this difference. The structure of the U.S. Constitution gives substantial powers of oversight of the executive branch to both Congress and the courts, and the broad privilege recognized in *Duncan*, and in turn, *Reynolds*, does not sufficiently respect oversight functions. The Third Circuit Court of Appeals understood better than the *Reynolds* Court the problems that reliance on *Duncan* could cause in the United States. Judge Albert Maris, writing for a unanimous panel hearing the *Reynolds* appeal, found that *Duncan's* "sweeping privilege against disclosure [is] . . . contrary to a sound public policy" and that it is "but a small step to assert a privilege against any disclosure of records merely because they might prove embarrassing."[55] The court concluded that "whatever might be true in Great Britain the Government of the United States is one of checks and balances," and that neither Congress nor the president may encroach on the judiciary by "transferring to itself the power to decide justiciable questions."[56] These fears were nevertheless realized in *Reynolds* and subsequent lower court application of its holding.

And as it turns out, Judge Maris's concerns were warranted, inasmuch as it is now known that the goal of the government in claiming the privilege in *Reynolds* was to avoid liability and embarrassment. The material originally requested by the plaintiffs in *Reynolds* has recently been made public through Freedom of Information Act requests, and it contained no classified or national security information. On the basis of these materials, the original plaintiffs and their relatives asked the U.S. Supreme Court to reverse its decision in *Reynolds*, at least on the question of governmental liability, because the government perpetrated a "fraud" upon the Court by asserting the state secrets privilege without justification. The Court refused to revisit the case, and the plaintiffs filed a new complaint in federal district court.

Second, both the *Duncan* and *Reynolds* courts wrestled with the issues of privilege at times of national crises, and there is reason to believe that the ne-

[54] Ibid., 10.

[55] *Reynolds v. United States*, 192 F.2d 987 (3rd Cir., 1951), 995.

[56] Ibid., 997.

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cessities of the moment, rather than the thought-out effects for civil liberties and constitutional arrangements of power, swayed the courts. For example, the courts in both cases refer to contemporary exigent events. In *Duncan*, a decision rendered at the height of World War II, in April, 1942, the references to the war are elliptical. In *Reynolds*, notice of the current political environment is open, with the Court commenting that "we cannot escape judicial notice that this is a time of vigorous preparation for national defense," and it "is equally apparent that [our capabilities] must be kept secret if their full military advantage is to be exploited in the national interests."[57] Under these circumstances, it is possible that the courts were less than adequately concerned about civil liberties and the integrity of constitutional arrangements of power.

The Supreme Court's holding in *Reynolds* fosters the same confusion presidents have repeatedly sought to promote, for after that decision, executive branch personnel claimed that the *Reynolds* approach applied to a variety of requests for information. For example, in a maligned 1958 statement to Congress, then-Attorney General William Rogers reported, "Courts have uniformly held that the President and the heads of the departments have an uncontrolled discretion to withhold information and papers in the public interest."[58] This conflation of executive privilege with the state secrets privilege, of course, reached culmination in *Nixon*, where counsel for President Nixon desperately tried to stretch the state secrets privilege to encompass all claims of executive privilege. In their brief to Judge John J. Sirica, White House counsel unsuccessfully claimed that "the principles announced in *Reynolds* have been applied by the lower courts to all claims of executive privilege, whether dealing with military secrets or with other kinds of information."[59] At the U.S. Supreme Court, Nixon's lawyers cited *Reynolds*, arguing that "there are some kinds of documents on which the decision of the Executive must be final, and not subject to review by the courts."[60] But the *Nixon* Court held that "neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity."[61] For the first time in U.S. history, the Supreme Court made explicit the distinction between the state secrets privilege and executive privilege, and concerning Nixon's claim that *Reynolds* stood for the proposition that the president's power to withhold information is an absolute privilege, the Court said, "No case of the Court . . . has extended [*Reynolds*'] high degree of deference to a President's generalized interest in confidentiality."[62]

[57] *United States v. Reynolds*, 10.

[58] U.S. Congress. Senate. Subcommittee on Constitutional Rights, Committee on the Judiciary, *The Power of the President to Withhold Information From the Congress, Memorandums of the Attorney General.* 85th Cong., 2nd sess. S. Hrg., 6 March 1958, 75.

[59] Editors, "Separation of Powers and Executive Privilege: The Watergate Briefs," *Political Science Quarterly* 88 (December 1973), 606.

[60] *Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law*, Volume 79 (Washington D.C.: University Publications of America, 1975), 718.

[61] *United States v. Nixon*, 706.

[62] Ibid., 711.

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Despite the narrowing of executive privilege in *Nixon*, however, the state secrets privilege has retained all the scope and power it originally garnered in *Reynolds*. In less than one-third of reported cases in which the privilege has been invoked have the courts required *in camera* inspection of documents, and they have only required such inspection five times out of the twenty-three reported cases since the presidency of George H.W. Bush. Even though *Reynolds* held that "judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers," the practical effect of the decision is to cause precisely that result.[63] The Court's caveat is so qualified and tempered by other language that the message cannot but be clear to lower courts that they are to avoid compelling the production of documents, even for court inspection, except in extraordinary cases. As the Court put it in *Haig v. Agee*, "Matters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention."[64] The plain fact is that if department heads or the president know that assertion of the privilege is tantamount to conclusive on the judiciary, and that federal judges rarely order documents for inspection, then there is great incentive on the part of the executive branch to misuse the privilege.

Closing Down the Game

Despite presidential adverting to the ancient origins of the state secrets privilege, it is only in the last several decades that it has seen extensive use. The rather clear beginning point for the increased use of the privilege occurred in the administration of President Jimmy Carter. There were more reported cases arising during his four years of presidency than all reported cases from previous presidential history. It seems that the U.S. Supreme Court decision in *Nixon* did nothing to dampen presidential desire for secrecy and willingness to withhold information.

Pattern of Use

Use of the state secrets privilege in courts has grown significantly over the last twenty-five years. In the twenty-three years between the decision in *Reynolds* and the election of Jimmy Carter, in 1976, there were four reported cases in which the government invoked the privilege. Between 1977 and 2001, there were a total of fifty-one reported cases in which courts ruled on invocation of the privilege. Because reported cases only represent a fraction of the total cases in which the privilege is invoked or implicated, it is unclear precisely how dramatically the use of the privilege has grown. But the increase in reported cases is indicative of greater willingness to assert the privilege than in the past.

[63] *United States v. Reynolds*, 9–10.
[64] 453 U.S. 280, 292 (1981).

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In only four cases did courts ultimately reject the government's assertion of the privilege. But even this number is misleading, for in two of those cases, the privilege was obviously misused to protect unclassified information in the Department of Commerce.[65] In a third case, the court rejected the assertion of the privilege because of failure to follow the procedural guidelines set out in *Reynolds*, although the court allowed the government to assert the privilege in the correct form and indicated that the privilege would then be upheld.[66] And the courts took a novel approach in a 1958 decision, ordering a complete trial to be held in secret to protect national security.[67]

Other than the scarce exception, the privilege is invariably fatal to efforts to gain access to covered documents. It is hardly surprising that such an effective tool would tempt presidents to use it with increasing frequency and in a variety of circumstances.

Injustice and the Failure of Oversight: Mechanisms of Judicial Deference

Recent events highlight limitations on congressional ability to oversee national security–related activities of the executive branch. In recognition of its limited capacities of oversight, Congress facilitates executive accountability by transferring much of its oversight function to the judiciary. These transfers pit permanent government employees against each other and so make the oversight process more enduring and comprehensive, and instances of these transfers abound. For example, the Federal Tort Claims Act, portions of the Administrative Procedure Act, and the Occupational Safety and Health Act, along with a host of other laws, lodge substantial powers of oversight of the executive branch in the federal courts. These powers are exercised incident to criminal or civil actions and are powers the judiciary usually does not shrink from exercising. Expanded powers of oversight vested in the judiciary, either through statute or judicial creation, are in striking contrast to the complete deference the judiciary affords administrators when the state secrets privilege is invoked. This judicial timidity does not go unnoticed; as the eminent Louis Fisher noted in one of his many appearances before Congress, "Courts have traditionally shown the . . . utmost deference to [claims of privilege]. It is fine for the courts to make that judgment . . . but Congress doesn't have to defer."[68] Although generally accepting the congressional efforts to extend oversight of the executive by employing judicial process, the federal courts have notably failed to take this invitation in the area of national security. The deference emanating from *Reynolds* toward claims of national security leads to failures of oversight that

[65] *Republic Steel v. United States*, 3 C.I.T. 117 (1982); *U.S. Steel v. United States*, 6 C.I.T. 182 (1982).

[66] *Yang v. Reno*, 157 F.R.D 625 (M.D. Penn., 1993).

[67] *Halpern v. U.S.*, 258 F.2d 36 (2nd Cir., 1958).

[68] U.S. Congress. Senate. Select Committee on Intelligence, "Disclosure of Classified Information to Congress." S. Hrg. 105–729. 105th Cong., 2nd Sess., 1998, 54.

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threaten our constitutional arrangement of powers. Secrecy may tempt administrators to adopt activities contrary to law and the Constitution, but when those activities are suspected, the courts double the damage by refusing to impose costs on the executive branch for its breaches. The courts employ several mechanisms of deference to comply with the spirit of *Reynolds*. Although *Reynolds* located a source for deference in separation of powers, in addition, courts often advance one or both of two justifications for deference to executive branch assertion of the privilege.

Impossibility of avoiding disclosure. Often, assertion of the state secrets privilege means the end of a case. If a plaintiff must obtain protected information in order to make out a prima facie case or to prove some essential element of the claim, courts will resolve the action by finding against the plaintiff. For example, in *Tilden v. Tenet*, an employee of the CIA filed suit under federal employment discrimination statutes seeking to rectify discriminatory practices of the CIA and to recover money damages. The court found that "based on a review of the Director's classified declaration the Court concludes that there is no way in which this lawsuit can proceed without disclosing state secrets [and] there are no safeguards that this Court could take that would adequately protect the state secrets in question."[69] Judge Claude M. Hilton continued, noting that the "Court is mindful that the invocation of the state secrets privilege in this case will deny the Plaintiff a forum under Article III of the Constitution for adjudication of her claim."[70] The disturbing possibility exemplified by *Tilden* and other discrimination cases is that intelligence agencies may simply opt out of compliance with federal statutes.

Similarly, *Halkin*, discussed briefly at the beginning of this article, demonstrates how wholesale constitutional violations may go unremedied. Although the revelation of the interception of thousands of phone and electrical communications of U.S. citizens created tremendous controversy, those who initiated the policies and procedures of methodical violation of the constitutional rights of citizens were never held to account for their actions. The *Halkin* Court shrank from its constitutional duty to constrain the executive from violating the constitutional rights of citizens because the wrongdoing of government administrators was closely entangled with classified operations.

Mosaic theory. Judges often accept invocations of the privilege because they feel incompetent to make a determination of what information would or would not be dangerous to national security if revealed. They are extremely reluctant, understandably, to replace administrative judgment on matters of national security with their own. There are some cases in which the injustice caused by this reluctance is of a sharp and disturbing nature. *Frost v. Perry*[71]

[69] *Tilden v. Tenet*, 627.

[70] Ibid.

[71] 919 F. Supp. 1459 (Dist. of Nevada, 1996).

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and *Kasza v. Browner*[72] are good examples of perverse and harmful uses of the privilege. In these cases, workers at the secret government facility popularly known as "Area 51" sued the government to find out what chemicals they had been exposed to during illegal dumping and burning of toxic waste by Area 51 administrators. The government had violated numerous criminal and civil environmental statutes by burning toxic chemicals and by using other unauthorized methods of transport and disposal of toxic waste. Workers at the site became ill, and some died, allegedly as a result of exposure to the chemicals. The government prevailed after asserting the state secrets privilege, and the workers never did discover what chemical wastes they were exposed to. One of the most disturbing features of *Kasza* was the "mosaic theory" expounded by both the district court and the court of appeals in upholding assertion of the state secrets privilege. This theory holds that even unclassified, seemingly banal information may be protected by the privilege because the sum of a large number of unclassified disclosures may add up to an overall picture of classified operations and capabilities. This theory first saw use in *Halkin*, where the court noted that

> it requires little reflection to understand that the business of foreign intelligence gathering in this age of computer technology is more akin to the construction of a mosaic than it is to the management of a cloak and dagger affair. Thousands of bits and pieces of seemingly innocuous information can be analyzed and fitted into place to reveal with startling clarity how the unseen whole must operate.[73]

The *Kasza* court noted that accordingly, "If seemingly innocuous information is part of a classified mosaic, the state secrets privilege may be invoked to bar its disclosure."[74] This leads to the obvious conclusion that the state secrets privilege may now prevent disclosure of unclassified information that cannot in any sense be reasonably characterized as state secrets. This is a rather stunning reach for a privilege that started out as a device to protect only the most sensitive information. Under the theory announced in *Kasza*, literally any piece of information may be argued to be a potential piece of a mosaic leading to a classified picture of U.S. operations. President Clinton provided a climactic moment to the case by issuing a Presidential Determination specifically exempting Area 51 from compliance with environmental regulations and prohibiting release of any information about Area 51 to the *Kasza* plaintiffs.

The privilege also sometimes shields malicious actions of administrators. *Maxwell v. First National Bank of Maryland* was a disturbing case involving illegal arms shipments and money laundering by the CIA. Robert Maxwell, a bank officer, handled, at the request of his supervisor, a number of transactions that were suspicious and lacked proper documentation. Maxwell subsequently learned that the transactions were in support of CIA operations and that his

[72] *Kasza v. Browner*, 133 F.3d 1159 (9th Cir., 1998).
[73] *Halkin v. Helms*, 8.
[74] *Kasza v. Browner*, 1166.

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name was attached to additional transactions he knew nothing about. Sternly warned not to keep any personal copies of these transactions and monitored closely at his office and home, Maxwell nonetheless surreptitiously made copies of numerous money transfers. When Maxwell finally expressed concern about the legality of the transactions, he and his family were threatened with harm. Federal agents allegedly harassed and surveilled Maxwell for years after he left the job with the bank, and interfered with his efforts to procure positions at other banks. When Maxwell sued the bank, the government successfully intervened, asserting the privilege to prevent the release of any documents relevant to the case. Moreover, the court precluded the use of information at trial that would establish the existence of a relationship between the CIA and the bank, and even held information to be inadmissible that had already been publicly disclosed. The court cited the mosaic theory as the basis for these determinations and over First Amendment claims to the right to testify, prevented Maxwell "from offering in evidence bank documents already in his possession or his own testimony about alleged admissions by bank officials concerning the relationship of [the bank] and the CIA."[75]

The mosaic theory turns many of the assumptions of liberal democracy inside out, and allows the government to make information secret and beyond the reach of judicial requests when that information could not properly be classified either under executive order or statute.

Separation of Powers

Misplaced judicial deference to the assertion of the privilege means more than citizens left without legal remedies; sometimes it creates instability in constitutional arrangements of power. The danger such deference presents to our constitutional framework is highlighted by the Clinton administration case of *Barlow v. United States.* Barlow, a former CIA employee, was fired from his job at the Department of Defense Office of Non-Proliferation Policy. He believed that the CIA and the Department of Defense were giving false information and testimony to Congress in an effort to manipulate it into passing legislation and funding specified programs. Barlow brought his complaints to his supervisor and stated that he would try to establish contact with members of Congress to inform them of his allegations. He was ordered not to contact members of Congress, even though the members he wished to talk to held security clearances and were already receiving the allegedly false information from the CIA and other intelligence agencies. Barlow argued that he was fired on the suspicion that he could not be trusted to keep secret the efforts to deceive Congress.

The U.S. Senate passed a resolution referring the case to the U.S. Court of Claims, where Barlow sued the United States under the Whistleblower Protection Act. His counsel made very focused discovery requests, and Director of

[75] *Maxwell v. First National Bank of Maryland*, 598.

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Central Intelligence George Tenet successfully asserted the state secrets privilege. In attempting to counter the claims of Tenet that no material requested could be turned over for evidence in the case for reasons of national security, Barlow submitted an affidavit from Charles Burke, a "high-ranking" former 30-year CIA employee. Burke stated that disclosure of the requested information would not jeopardize national security, and, like Barlow, he believed that Congress had been lied to. Burke also implied that Director Tenet's assertion of the state secrets privilege was made to prevent disclosure of material that would substantiate Barlow's claims that intelligence agencies had intentionally deceived Congress.[76] Despite the importance of the issues involved and in the face of rather clear evidence of possible misuse of the state secrets privilege, the court declined to look past the bare assertions of the government. Barlow did not get the materials requested and lost his case.

The Bush administration recently engaged in behavior similar to, if perhaps even more aggressive than that of the Clinton administration in *Barlow*. Sibel Edmonds, a translator for the FBI, blew the whistle on the FBI's translation department in 2002, claiming it was riddled with incompetence, corruption, malingering, and criminal behavior. Edmonds was fired from her job, and she filed suit against the FBI. She testified before Congress and the commission investigating the attacks of September 11, and much of her testimony was corroborated, with Senators Charles Grassley and Patrick Leahy, the chair and senior minority party member, respectively, of the Senate Judiciary Committee, finding her to be thoroughly credible. Attorney General John Ashcroft asserted the state secrets privilege in two cases in an effort to prevent Edmonds from publicly revealing the details of her assertions against the FBI. One claim was designed to prevent her from giving a deposition in a case filed against the Saudi Arabian government and various Saudi companies by hundreds of family members of those killed in the attacks of September 11.[77] The other state secrets claim is being pursued to have the case against the FBI by Edmonds dismissed.[78] Further, the Department of Justice (DOJ) succeeded in placing Edmonds under a "gag" order to prevent her from publicizing her revelations about the FBI and its translation department. In the final step of a concerted effort to prevent the details of Edmond's story from making it to the public, in May 2004, Attorney General Ashcroft retroactively classified information and documents about Edmonds' claims that the DOJ had delivered to Congress in 2002. Now Congress is prevented from utilizing the retroactively classified information in published testimony or committee reports. The purpose of these efforts to close off information seems to be directed more at avoiding embarrassment and the publication of unsavory details about the FBI than at protecting the national security.

[76] *Barlow v. United States*, 21–22.

[77] "Declaration of John Ashcroft" in *Burnett v. Al Baraka* Investment and Development Corp., MSC 04-203(RBW), 13 May 2004.

[78] "Statement of Barbara Comstock, Director of Public Affairs, Regarding Today's Filing in *Sibel Edmonds v. Department of Justice*," No. 02-605, 18 October 2002.

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If Congress must rely solely on executive branch intelligence agencies for information in making decisions, without any means of verifying that information, it is completely at the mercy of the president and the executive bureaucracy. Judicial deference to the privilege in cases such as *Barlow* amounts to complicity with the executive branch in undermining congressional power and responsibility. And on occasion, judicial functioning seems perhaps compromised by the perspective of secrecy that pervades executive agencies, and, therefore, may utterly fail in maintaining the separation of powers. In *In re United States*, judge Douglas Ginsburg withheld two-thirds of his dissenting opinion, stating, "Unfortunately, I am unable fully to explain my disagreement with the court . . . without discussing [classified information] and thus the bulk of this opinion will be available only to a limited readership."[79] That limited readership included government attorneys but not plaintiff's counsel. In appealing such a ruling, it is unclear how a litigant would be able to go about addressing arguments it may not see, drawn from evidence it may not review.

Present Use of the Privilege

Recent use of the state secrets privilege shows a tendency on the part of the executive branch to expand the privilege to cover a wide variety of contexts. Conflict of interest is a fundamental problem afflicting the current arrangement for assertion of the privilege and the deference with which courts are required to treat such assertions. Lord Coke famously remarked, "The King cannot be judge of his own cause, therefore the case must be judged by the Lords."[80] In this spirit, Executive Order 12,958, issued by President Clinton, commands that "in no case shall information be classified in order to . . . conceal violations of law, inefficiency, or administrative error [or to] prevent embarrassment to a person, organization, or agency."[81]

In 1998, on the issue of disclosure raised by Executive Order 12,958, Congress debated statutory language that would allow executive branch employees to directly inform members of Congress or their staff representatives of waste, fraud, or violations of law by administrators. The Office of Legal Counsel at the DOJ opposed the language, arguing that it violated the separation of powers, and the proposed legislation failed. In the course of the debate, Senator Charles Robb asked Deputy Attorney General Randolph Moss the following hypothetical question: "If an executive branch official signed a specific, illegal

[79] 872 F.2d 472, 480 (D.C. Cir., 1989).

[80] Wallace Notestein, Frances Relf, and Hartley Simpson, eds., *Commons Debates: 1621* (New Haven, CT: Yale University Press, 1935), 195.

[81] 60 Fed. Reg. 19825, 17 April 1995.

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finding authorizing the assassination of a foreign head of state, would an executive branch employee be authorized to report the act to Congress?" In an astonishing reply, Moss essentially said no, only weakly noting that "the National Security Act require[s] reporting to Congress by the President" of violations of law.[82] But it is unreasonable and constitutionally unsound to rely on presidents and administrators to report their own misconduct.

President George W. Bush's administration seems even more committed to secrecy and maintenance of executive power than previous administrations, and a number of key personnel have histories of involvement with the withholding of records under unusual circumstances. For example, now-Secretary of Defense Donald Rumsfeld, as both counselor to President Nixon and executive director of the Cost of Living Council, withheld documents requested by Congress in 1970 on two occasions. In both instances, Rumsfeld and Nixon claimed that a "confidential relationship" between him and the President precluded compliance with congressional requests for information.[83] And Attorney General John Ashcroft imposed stricter guidelines concerning Freedom of Information Act requests. The previous policy, by Attorney General Janet Reno, authorized withholding information only when an agency "reasonably foresees that disclosure would be harmful [to national security]."[84] Ashcroft's memorandum, superseding Reno's, directs agencies to withhold information where there is a "sound legal basis" to do so.[85] Given the reach and effectiveness of the state secrets privilege, such a directive is tantamount to making disclosure of any particular piece of information subject to the idiosyncratic discretion of administrators. A "sound legal basis" for withholding information under the state secrets privilege may be manufactured for virtually any document an administrator does not want the public to see. And the impossibility and mosaic theories, coupled with the courts' demonstrated reluctance to even conduct *in camera* inspections of material before affirming secrecy, mean that an administrator's decision to withhold information by assertion of the state secrets privilege is virtually unreviewable.

As cases against the Bush administration wend their way through the courts, judges are beginning to see broad assertions of executive power from administrators to withhold information from the public, the courts, and Congress. In a case against Vice President Cheney to force release of documents

[82] U.S. Congress. Senate. *The Power of the President to Withhold Information*, 58.

[83] U.S. Congress. House. Committee on Government Operations, *U.S. Government Information Policies and Practices. Part 8: Problems of Congress in Obtaining Information from the Executive Branch*, 92nd Cong., 2nd sess. 23 May 1972, 3138.

[84] Janet Reno, "Memorandum for Heads of Departments and Agencies: Subject: The Freedom of Information Act," 4 October 1993, accessed at the website of the Department of Justice at http://www.usdoj.gov/oip/foia_updates/Vol_XIV_3/page3.htm, 5 March 2003.

[85] John Ashcroft, "Memorandum for Heads of All Federal Departments and Agencies: The Freedom of Information Act," 12 October 2001, accessed on the website of the Department of Justice at http://www.usdoj.gov/04foia/011012.htm, 5 March 2003.

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concerning meetings of the now-famous energy task force, the National Energy Development Group, Judge Emmet G. Sullivan found Bush administration claims of privilege to "reflect what appears to be a problematic and unprecedented assertion, even in the face of contrary precedent, of Executive power."[86] Sullivan then took note of a pattern of behavior on the part of Bush administration attorneys: "The fact that the government has stubbornly refused to acknowledge the existing controlling law in at least two cases, does not strike this Court as a coincidence. One or two isolated mis-citations or misleading interpretations of precedent are forgivable mistakes of busy counsel, but a consistent pattern of misconstruing precedent presents a much more serious concern."[87] Notwithstanding this chilly reception by the federal judiciary of Bush's claims of executive privilege, all seven of the known Bush administration formal assertions of the state secrets privilege that have so far been considered by courts have been successful.[88] Indeed, recent cases indicate that Bush administration lawyers are using the privilege with offhanded abandon. In one case, DOJ attorneys raised the privilege on 245 separate occasions, yet failed to follow through and meet the formal criteria prescribed in *Reynolds* for invocation of the privilege.[89] This conduct indicates that the administration may be asserting the privilege to prevent discovery or disclosure of information even in cases in which the privilege is not warranted.

Undaunted by mounting criticism, Bush issued an order in November 2001 with far-reaching implications for modifying procedures under the Presidential Records Act. Executive Order 13,233 extends the power to assert the state secrets privilege to former presidents to prevent disclosure of information generated during their presidencies. There, Bush stated that the "President's constitutionally based privileges subsume privileges for records that reflect: military, diplomatic, or national security secrets (the state secrets privilege) . . .",[90] and that "the former President independently retains the right to assert [these] constitutionally based privileges."[91]

This is a power heretofore unrecognized either in courts or politics. In *Nixon v. Administrator of General Services*, the U.S. Supreme Court was ambivalent on the point of whether a former president could assert the so-called presidential communication privilege. Justice William Brennan, writing for the Court, found that despite strong arguments weighing against it, there is at least

[86] *Sierra Club v. Cheney*, "Memorandum Opinion." Civil Action No. 01-1530 (D.C., 2002), 56.

[87] Ibid., 64–65, n.14.

[88] *Burnett v. Al Baraka Investment*, 323 F. Supp. 2d 82 (D.C., 2004); *Darby v. Department of Defense*, 74 Fed. Appx. 813 (9th Cir., 2003); *Edmonds v. Department of Justice*, 323 F. Supp. 2d 65 (D.C., 2004); *Global Relief Foundation v. O'Neill*, "Memorandum Opinion and Order," Case No. 02-C-674 (N.D. Illinois, 2002); *Sterling v. Tenet*; *Tenenbaum v. Simonini*, No. 02-2297 (6th Cir., 2004); *Trulock v. Wen Ho Lee*, Civil Action No. 00-1527-A (E.D. Virginia, 2002).

[89] *Int'l Action Ctr. v. United States.*

[90] 66 Fed. Reg. 56025, 1 November 2001, Sec. 2(a).

[91] Ibid., Sec. 3(d)(1)(ii).

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a weak power in former executives to assert the "communication" privilege. But the Court found it clear and uncontested that the "very specific privilege protecting against disclosure of state secrets . . . may be asserted only by an incumbent President."[92] When questioned about the Order, President Bush appeared to confirm the unprecedented reach of the privilege: "[The Order] lays out a procedure that . . . is fair for past Presidents . . . a process that I think will enable historians to do their job and at the same time protect state secrets."[93] The clear implication of this statement is that even former presidents may assert the state secrets privilege to protect against disclosure of documents from their administrations, regardless of Supreme Court precedent to the contrary.

Richard Nixon fought to the end of his life, and his heirs continued the fight on his behalf, to control the process by which his tapes and other records would be preserved and stored.[94] Unsuccessful in asserting the state secrets privilege to prevent disclosure of embarrassing and damaging information, Nixon shifted his attack, attempting to limit the material released and to control the form in which it was released. The protracted litigation, combined with lack of full cooperation from the National Archives, has had the effects of limited access and continuing secrecy with regard to the Nixon tapes. If President Bush is successful in reasserting the state secrets privilege to cover presidential records, however, the access problems will become insurmountable, and the ongoing disputes over when and how the archival records of past presidents can be researched will be eclipsed by the threshold question of whether anyone may see them at all without a former president's consent.

Just as the current administration's stance threatens to unsettle the presidential records secrecy question, so too does it complicate the oft-raised matter of the continued publication of the Foreign Relations of the United States (FRUS), a documentary history of U.S. foreign relations. President Reagan sought to limit publication of the volumes in this series, to the dismay of historians and archivists, who rely on it as a critical research source for understanding the history of American foreign policy. Although the FRUS was already subject to a thirty-year publication delay, ostensibly for reasons of state secrecy, Reagan issued Executive Order 12,356 in 1982, which required "protection of information that 'alone, or in the context of other information' could cause damage to national security."[95] The wording here seems calculated to import the mosaic theory into decisions concerning FRUS publication. When the Advisory Committee complained about "overclassification" with regard to FRUS, the State Department changed the composition of the Committee "to dilute the voice of its historian members."[96]

[92] *Nixon v. Administrator of General Services*, 433 U.S. 425, 440 (1977).

[93] George W. Bush, "Remarks Following Discussions With President Olusegun Obasanjo of Nigeria and an Exchange With Reporters," *Public Papers of the Presidents*, Volume 37, No. 44, 2 November 2001.

[94] See Joan Hoff, "The Endless Saga of the Nixon Tapes" in Theoharis, ed., *A Culture of Secrecy*, 115–139.

[95] Page Putnam Miller, "We Can't Yet Read Our Own Mail: Access to the Records of the Department of State" in Theoharis, ed., *A Culture of Secrecy*, 191.

[96] Ibid., 192.

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The Bush administration also relies on the state secrets doctrine to buttress its decision to allow for secret military tribunals to prosecute foreign terrorists. Anticipating that information brought into evidence in order to convict terrorists may oftentimes be classified, the military order establishing the tribunals mandates that trials are to be closed to outside observers and that all issues of fact and law are to be determined by the tribunal, rather than by a jury. The Order directs that consideration against disclosure of state secrets will regulate "the conduct, closure of, and access to proceedings" and that this secrecy extends to "pretrial, trial, and post-trial procedures, modes of proof, issuance of process, and qualifications of attorneys."[97]

And President Bush recently designated the Secretaries of Agriculture and Health and Human Services, and the chief administrator of the Environmental Protection Agency as eligible to "classify information originally as 'Secret.'" And the Office of Science and Technology Policy now has "top secret" original classification authority. This means that more administrative and bureaucratic activities will be put beyond the reach of courts and the public, because the state secrets privilege will be available to the heads of these departments to protect material they now have the authority to classify. Even if we assume that the classification authority for these department heads is indeed necessary, such authority obviously expands the discretionary power of administrators to exclude documents from public access.

Finally, our own attempts to obtain policies governing assertion of the state secrets privilege met with failure, inasmuch as there appear to be no policy guidelines on the use of the privilege in any major department or agency of the executive branch. Freedom of Information Act requests to some three dozen agencies and their various subcomponents yielded nothing in the way of documentation of guidance for use of the privilege. Any limitations on assertion of the privilege appear to be self-imposed by the individual agencies, and use of the privilege seems to be carried out ad hoc at the discretion of department heads and their assistants. Perhaps the general feeling of administrators concerning the privilege was summed up in a Department of the Navy memorandum: it concluded that "there is nothing but good news about the state secrets privilege" as a tool to prevent disclosure of information.[98]

The current structure of the state secrets privilege virtually guarantees that its assertion in any particular case will be successful and that the costs for abuse of the privilege will be minimal or nonexistent. The existence of such an effective tool of executive power, combined with the attacks of September 11, 2001 and their aftermath, provides a ready context for understanding the impulse of the Bush administration to expand the use of the privilege to prevent scrutiny and information gathering by Congress, the judiciary, and the public. But with increased use comes also the suspicion that the privilege may be more easily and

[97] Military Order, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 Fed. Reg. 57834-57835, 13 November 2001.

[98] Department of the Navy, Office of the Judge Advocate General, "Asserting the State Secrets Privilege in United States Claims Court and Board of Contract Appeals Cases," 3 February 1992.

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frequently abused to thwart oversight and to protect illicit behavior. Both the Congress and the courts have the duty to oversee the use of the privilege and to take measures to prevent its misuse. But the courts, because the privilege is of judicial origin, are responsible for taking the first concrete and measured steps to check the reach of the privilege, especially where that reach threatens to undermine the constitutional balance of power and to invade public interests.*

* This article is part of a larger project by Weaver and Pallitto to perform a comprehensive legal analysis of presidential secrecy powers.

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Law, Rules, and Presidential Selection

SAMUEL ISSACHAROFF

It is a paradox of democratic decision making that for the people to decide, there must be accepted rules of decision. The rules that govern how majorities may exercise their dominion and over what subjects they may do so generally stand apart from the immediate process of majoritarian selection. Ideally, the rules should reflect a conventional understanding of fair processes of decision making. But, unfortunately, political theory well teaches that the processes of decision making constrain and inform substantive outcomes, no matter how innocuous their design. By way of introduction to the rules governing presidential selection, let me turn to the other American fall classic—the game of baseball—and to its most famous World Series.

The 1960 World Series between the New York Yankees and the Pittsburgh Pirates is best known for Bill Mazeroski's dramatic ninth-inning home run in the decisive seventh game. That home run was the first time that a World Series ended upon the last batter reaching home plate—a feat that has been repeated only once by Joe Carter of the Toronto Blue Jays, and even then only in the sixth game. But the 1960 World Series may also serve as a curious introduction to the topic at hand: the Constitution and presidential selection. For it turns out that Pittsburgh's triumph in 1960 was simply an artifact of the rules in force. By every conceivable measure, the Yankees had prevailed and the wrong team went home besplendored with Series rings. The Yankees outscored the Pirates 55-27; outhit them .338 to .256; and outpitched them, with a team ERA of 3.54, compared to the Pirates's 7.11.[1] In short, the 1960 World Series was a rout, except for the troubling fact that the losing team emerged victorious.

[1] I am indebted to Professor Michael Herz, both for the statistics and for the direct analogy to the law of presidential selection. See Michael Herz, "How the Electoral College Imitates the World Series," *Cardozo Law Review* 23 (March 2002): 1191.

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As best I can tell, not much popular outrage followed the World Series of 1960. I suspect most baseball fans understood the rules of a seven-game series before the fall classic. And I suspect they understood that running up the score on weak middle relievers was simply irrelevant to the outcome of anything but one particular game. Indeed, more outrage seems to have been directed at Commissioner Bud Selig's decision to suspend play after eleven innings in the 2002 All Star game, an exhibition game of no consequence in the quest for the championship. A comparison of the baseball events of 1960 to 2002 leads to the conclusion that as long as the rules of the game are known *ex ante*, and are not subject to on-the-spot manipulation, baseball fans accept and even appreciate the anomalous possibilities that might ensue.

Not so, it seems, for presidential selection. Three times in the 200-plus years of the American republic, as a result of votes being channeled through the electoral college, the most preferred presidential candidate has not been the victor.[2] Once, in 1876, that candidate even won an outright majority of the popular vote. Although in terms of sheer frequency, such anomalous results appear about as often as Halley's comet, they nonetheless move political scientists, constitutional scholars, and pundits to start searching the skies for electoral asteroids. Or, to return to a baseball metaphor, the interval of such anomalous presidential results is about on the order of successful World Series appearances by the Boston Red Sox. Indeed, in retrospect, we are more likely to rethink the outcome of the 1960 presidential election than that of the World Series of the same year, with data much less reliable on the former than on the latter.

It would, of course, be possible to challenge the stability of electoral results if the presidential election were simply a matter of direct popular selection. The 2000 election, to take the most recent example of an election notoriously decided by the rules of decision making, could not possibly have unfolded in the same fashion under an alternative voting system. Would both parties have foregone serious advertising in Texas or New York under a system of direct selection? Could they possibly have conceded two of the most populous states if, instead of being a safe electoral bloc, they were a mass of potential individual votes? Or would the issues of the election have been the same? How did prescription drug coverage for elder citizens come to dominate the national agenda? Perhaps this is the cutting issue of our time. But perhaps the pre-election analyses that predicted that Florida and Pennsylvania would be the decisive electoral battlegrounds had something to do with defining the terms of debate. Perhaps, just perhaps, the fact that Florida and Pennsylvania are first and second, respectively, in their proportions of senior citizens had something to do with the terms of electoral engagement in 2000.

[2] The electoral college failed to award the presidency to the winner of the popular vote in 1876, when Rutherford B. Hayes defeated Samuel Tilden; in 1888, when Benjamin Harrison defeated Grover Cleveland; and, of course, in 2000. In addition, in 1824, Andrew Jackson won a plurality of the popular vote and the electoral college, but ultimately lost the presidency to John Quincy Adams after the election was decided by the House of Representatives.

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But the role of the electoral college in framing presidential selection is a more serious topic than whether it proved truly decisive in a particular election. Channeling presidential selection through the electoral college admits of the possibility of electoral results as seemingly anomalous as the outcome of the 1960 World Series—regardless of the particulars of the result in 2000. It becomes all the more serious when as eminent a political scientist as Robert Dahl identifies American presidential selection as among the suspect features that suggest the question, as he titles his sweeping Castle Lectures, "How Democratic Is the American Constitution?" For Dahl, the electoral college is emblematic of the democratic failings of an aging constitutional order. He invites contemporary opinion to reject the intentions of the Framers if Americans come to believe that those founding intentions "were morally, politically, and *constitutionally* wrong."[3]

This paper addresses the last of these claims. Leaving aside commitments to more directly majoritarian or democratic ordering drawn from moral or political theory, what does it mean to challenge presidential selection through the agency of law or the Constitution? It is one thing to posit, as Jon Elster does as a matter of first-order political theory, that democracy *is* "simple majority rule, based on the principle of 'one person, one vote.'"[4] It is quite another to try to fashion a claim from within law that such a narrow vision of majoritarianism is legally compelled. My argument will be that the invitation to engage in such constitutional claims regarding the electoral college proves to be remarkably hollow. With one secondary aspect aside, the system of presidential selection is not only constitutionally enshrined (and, hence, immune from the charge of constitutional infirmity, at least from within the domestic constitution) but also neither significantly aberrant from the overall restraints of direct majoritarianism in the Constitution nor so significant a departure from ultimate accountability to majoritarian preferences as to trigger the increasingly democratic gloss that judicially crafted constitutional law has superimposed on the original constitutional design. The upshot is the modest conclusion that law operates primarily as a closed system of rules enforcement, not that unlike baseball, and that an appeal to constitutional law for an alteration of the mechanisms of presidential selection is not particularly fruitful. A change in presidential selection is a political decision best left in the domain of politics, and law can at best inform some issues of institutional design.

How Majoritarian a Constitution?

The most controversial aspect of American presidential selection, and the most unique in terms of constitutional democracies, is undoubtedly the electoral col-

[3] Robert A. Dahl, *How Democratic Is the American Constitution?* (New Haven, CT: Yale University Press, 2001), 5 (emphasis added).

[4] Jon Elster, "Introduction" in Jon Elster and Rune Slagstad, eds., *Constitutionalism and Democracy* (Cambridge, MA: Cambridge University Press, 1993), 1.

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lege. In questioning the commitment to democratic values in the American Constitution, Professor Dahl introduces two distinct critiques of the electoral college. First, he presents a capsule historic account that shows, quite plausibly in my view, that the electoral college was largely a historical accident.[5] The constitutional debates were marked by repeated rejections of intermediaries between popular election and the actual selection of the executive. As Dahl presents the account, the electoral college emerged only after several other far superior methods of executive selection failed to garner sufficient support, and only when an exhausted set of delegates lost heart in further deliberation. Although this account calls into question the depth of the constitutional commitment to the electoral college, it does little more. The Constitution was undoubtedly a product of its time and reflected the vision and limitations of its Framers. The absence of proportional representation from the initial American electoral design, another significant point of departure from almost all other constitutional democracies, is similarly a product of its time: proportional representation techniques had not yet been invented at the time of the framing of the American Constitution.

A more interesting question, which relates to Dahl's second critique, is whether the electoral college is a constitutional aberration. It may well be that the Framers were exhausted and, anticipating W.C. Fields, eager to leave Philadelphia. But the provenance of the electoral college can be separated from the question of how well it fits into the overall constitutional scheme. Examined in this manner, the exceptionalism of the electoral college begins to blur into a background commitment to intermediary political institutions designed to temper purely majoritarian preferences. Indeed, an examination of the electoral college in constitutional context reveals little in the overall constitutional structure that can be described as truly majoritarian. This is the product, first and foremost, of the fact that whatever weak attachment the Framers might have had to majoritarianism, they were unequivocal in maintaining an overriding commitment to the preservation of the states as political entities within the federal system. As a result, there is not a single representative institution created by our constitutional framework in which the will of the majority is not filtered through the states, at least to some degree. That is to say, the Senate, the House of Representatives, and the constitutional amendment process, like the electoral college, all rely on the states as political entities. If, as Dahl argues, the electoral college truly is "constitutionally wrong," then certainly these other institutions must also fail to meet his rather strict criteria, whatever they might be.

Any system of government that relies on intermediaries such as states guarantees that in certain cases, the will of the majority will be distorted. Thus, the argument that the electoral college fails to preserve perfectly majoritarian preferences would likely have had little hold on the Framers, at least relative to their commitment to preserving the importance of the states within our political or-

[5] Dahl, *How Democratic Is the American Constitution?*, 74–79.

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der. When viewed as part of the overall constitutional commitment to a federal structure, what is most striking about the relation between the electoral college and majoritarianism is actually the modesty of the effect of the electoral college relative to other constitutional structures of governance.

The poster child for antimajoritarianism is clearly the Senate. Here, too, a story of constitutional happenstance may be told. The debates at the Constitutional Convention focused on the perceived need for a bicameral legislature to avoid the risk of "mob rule" that had been associated with the radical Pennsylvania commitment to a one-house legislature elected at large from the entire state.[6] But the Framers could not agree on the mechanism for the creation of an upper chamber, and the idea of state representation emerged as a default late in the Convention. Unlike the electoral college, the resulting departure from a majoritarian ideal is of both substantial size and political consequence.

Beginning with the 2004 election, California, with a population of 33,930,798, has fifty-five electoral votes; Wyoming, the smallest state, with a population of 495,304, has three.[7] In contrast, both states have two senators. Thus, while the electoral college does slightly increase the power of small states at the expense of larger ones, its distorting effect is nowhere near as great as that of the Senate. Under this structure, it is very easy for senators representing a minority of the population to enact (or block) legislation opposed (or supported) by those representing the majority. In fact, because a filibuster requires only forty-one votes to stop a bill, it is conceivable that senators representing slightly more than 11 percent of the American people could stop legislation supported by senators representing the other 89 percent. Similarly, the sixty senators from the thirty least populous states represent less than a quarter of the population yet have the ability to enact legislation over the opposition of senators representing the overwhelming majority of the nation.

A departure from majoritarianism of similar scope is found in the Article V amendment process. Although enacting a constitutional amendment requires ratification by a supermajority of state legislatures, it plainly does not require the support of state legislatures representing a supermajority of the American people. As with the Senate, California has no more influence than Wyoming or Alaska. In fact, because the thirty-eight least populous states contain barely 40 percent of the nation's population, it is conceivable than an amendment could be ratified by three-quarters of the states and still not have the support of states comprising even a simple majority of the American people. Similarly, the opposition of the thirteen least populous states—comprising less than 5 percent of the nation—would be enough to defeat any proposed amendment.

[6] Samuel Issacharoff, Pamela S. Karlan, and Richard H. Pildes, *The Law of Democracy: Legal Structure of the Political Process* (New York: Foundation Press, revised 2nd edition, 2002), 212.

[7] Population statistics are taken from U.S. Census Bureau, "Apportionment Population and Number of Representatives by State: Census 2000," 28 December 2000, accessed at http://www.census.gov/population/cen2000/tab01.pdf, 25 August 2002.

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The point of this discussion is not to suggest that these scenarios are that likely—although some certainly are—but simply to show that the electoral college is far less aberrational than its opponents would suggest. Like the Senate and the Article V amendment process, the electoral college reflects a series of political choices. Like these institutions, it is a product of the time in which it was created. Even the Twelfth Amendment, adopted after early experience with both the Senate and the problem of contested presidential elections, committed itself to the votes for president being cast by state delegations—and not by individual members of the House of Representatives.[8]

In fact, even the system used to apportion seats in the House of Representatives creates more distortions than might be assumed. Article I, Section 2 states that "each state shall have at least one representative."[9] As a result, although the average Congressman represents 646,952 people, Wyoming's lone representative represents just 495,304. Montana, despite having nearly twice the population of Wyoming, still has only one representative. In fact, although the Supreme Court has mandated that all representatives within a state's delegation must represent the same number of people, the requirements of Section 2 render such equality across state borders impossible. The distortions created by the system of congressional apportionment are not systematic in nature—that is, they do not benefit small states at the expense of large, or vice versa—but they confirm the extent to which the overall constitutional design departs from any simple majoritarian claim.

Although beyond the scope of this paper, it is worth noting the common features of these departures from narrow majoritarianism. In each case, the locus of decision making is spread geographically to ensure a diversity of support for the proposed course of conduct, whether it be the selection of the president, an amendment to the Constitution, or even the passage of ordinary federal legislation. One may argue that the focus on the states is a crude measure of depth of support for action taken at the national level. One may further draw on public choice theory to argue the rent-seeking mischief that may follow from granting local or regional strong hold-out powers in such a complicated federal arrangement. But these arguments do not do justice to the initial concerns over a fragile national endeavor in which important sectional interests, some worthy of respect and some a historic shame, would not have submitted to the new federal enterprise absent guarantees that their political fortunes did not rest on simple majority will.

Evolving Constitutional Majoritarianism

Even if we accept that the electoral college is not aberrant within the constitutional structure as created by the Framers, it may still be argued that subse-

[8] The relevant section of the Twelfth Amendment provides: "But in chusing [sic] the president, the votes shall be taken by states, the representation from each state having one vote. . . ." U.S. Const. amend. XII.

[9] U.S. Const. art. I, § 2.

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quent developments in constitutional law have rendered it no longer viable within our constitutional framework. Demetrios Caraley, for example, argues that evolving constitutional principles have rendered the electoral college not outside the original constitutional framework, but likely violative of an evolving de facto constitutional right to direct election of the president.[10] Similar arguments premised on the notion of an evolved Constitution would suggest that the electoral college is simply inconsistent with the equipopulation principle of "one person, one vote," as spelled out in *Reynolds v. Sims* and other cases building on the legacy of *Baker v. Carr*.[11] In requiring equipopulation districts at the state legislative and congressional levels, these cases have essentially constitutionalized a more robustly majoritarian conception of American democracy than held sway at the time of the drafting of the original Constitution. Thus, a claim may be raised that the evolving role of majoritarian commitment of American constitutional law requires a revisitation of constitutional practices that fail to conform. As a result, a constitutional mechanism, such as the electoral college, that conforms to the original constitutional design may become obsolete or suspect as a result of subsequent amendments to the Constitution and the interpretive gloss that they inspired.

Lucas Powe makes a variant of this argument with regard to the most enshrined of constitutional actors, the Senate. He refers to the *Reynolds* opinion as "a direct slap at the United States Senate." "There is no other reading of *Reynolds*," Powe writes, "except one that concludes the United States Senate's overrepresentation of the smaller states violates the nation's principles of political fairness."[12] One could extend this argument to the electoral college and conclude that the constitutional principles expressed in *Reynolds* and its progeny are simply inconsistent with any system that allows for the possibility that the popular vote winner could ultimately fail to triumph.

This argument rests, in my view, on an overly simple reading of the reapportionment cases, one that collapses a commitment to equality as a participatory right in the political process with a more difficult claim of a right of a majority necessarily to prevail electorally. It is certainly possible to argue, as Powe does, that the logic of equal participation compels a right of majority entitlement to electoral victory.[13] But the Supreme Court, even in the ambitious and often aspirational claims of the Warren Court, never enshrined as constitutional doctrine the principle that the majority must prevail on every issue, or even in any particular election. Rather, the apportionment and participation cases that emerged in the 1960s state the claim in the negative. Not only would denials of individual rights of participation be overwhelmingly suspect, but the rules of

[10] Demetrios James Caraley, "Editor's Opinion: Why Americans Deserve a Constitutional Right to Vote for Presidential Electors," *Political Science Quarterly* 116 (Spring 2001): 1.

[11] *Reynolds v. Sims*, 377 U.S. 533 (1964); *Baker v. Carr*, 369 U.S 186 (1962).

[12] Lucas A. Powe, Jr., *The Warren Court and American Politics* (Cambridge, MA: Belknap Press, 2000), 252.

[13] Ibid.

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electoral selection could not be structured so as to systematically thwart the majority time and time again. That is to say, the majority need not triumph all the time, but it cannot be so disenfranchised that it lacks the ability to implement its will over the long run.

This distinction between these two interpretations of the reapportionment cases is significant. Certainly, if the Constitution does stand for the principle that simple majoritarianism must prevail on every issue, then the electoral college, the Senate, the amendment process, and, arguably, the House of Representatives, are all constitutionally suspect. But if it instead simply stands for the principle that the minority cannot be permitted to structure the rules so as to systematically thwart the will of the majority, the claim that these decidedly nonmajoritarian institutions are constitutionally suspect is far more problematic.

If the test is a persistent and irremediable frustration of the will of the majority, the constitutional case against the electoral college fails. After all, the electoral college has failed to award the presidency to the winner of the popular vote only four times in our history—although once, the final actor was not the electors but the House of Representatives—and only once in the last hundred years. Even the staunchest critics of the electoral college would be hard-pressed to argue, on the basis of this evidence, that it systematically thwarts the will of the majority.

The same cannot be said of the situations presented by the redistricting cases. In the leading cases, such as in *Reynolds* itself, for instance, rural minorities simply disregarded state constitutional obligations to reapportion so as to perpetuate their dominance over local politics.[14] State political majorities had no effective outlet for their political claims because the state legislatures were structured to impair their electoral power. This ultimately proved the justification for Court intervention to dislodge this lockhold on electoral accountability. Once the Court intervened, however, it went further than simply declaring that any redistricting scheme that threatened to systematically frustrate the will of the majority was unconstitutional. Rather, it insisted on complete equality in redistricting, under the one-person, one-vote standard. Indeed, Justice Potter Stewart, writing in dissent in *Lucas v. The Forty-Fourth General Assembly of the State of Colorado*, argued unsuccessfully for a more flexible standard under which "any plan which could be shown systematically to prevent ultimate effective majority rule, would be invalid under accepted equal protection clause standards."[15] Nonetheless, as John Hart Ely has argued, the emergence of the one-person, one-vote rule of apportionment was not so much the product of a principled attachment to majoritarianism as to a standard capable of judicial implementation: "So the Court entered, and *precisely because of considerations of administrability*, soon found itself with no perceived alternative but to move to a one-person, one-vote standard."[16] Approached in this fashion, even the most clearly majoritarian doctrines of modern constitutional law do not yield an easy condemnation of the electoral college.

[14] See *Reynolds*, 540–541.

[15] 377 U.S. 713, 754 (1964) (Stewart, J., dissenting).

[16] John Hart Ely, *Democracy and Distrust* (Cambridge, MA: Harvard University Press, 1980), 124.

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The Court itself has repudiated any reading of its reapportionment decisions to suggest that the Constitution requires the majority to prevail in all cases. In *Gordon v. Lance*, the Court was asked to consider a requirement of West Virginia law that prohibited any county or other political subdivision from incurring public debt without first garnering in a referendum the support of 60 percent of the voters.[17] The Supreme Court of West Virginia had invalidated the provision, holding that it was inconsistent with the requirements of "one person, one vote." The U.S. Supreme Court reversed this decision, finding the state court's reliance on the federal redistricting and voting rights cases "misplaced."[18] Chief Justice Warren Burger, writing for the majority, declared that "there is nothing in the language of the Constitution, our history, or our cases that requires that a majority always prevail on every issue."[19] More recently, the Court returned to the issue of the extent of its commitment to majoritarianism in the context of recognizing a claim for unconstitutional partisan gerrymandering. In assessing whether a districting configuration in Indiana would fall for not rewarding the majority party with a majority of legislative seats, the Court wrote:

> And, as in individual district cases, an equal protection violation may be found only where the electoral system *substantially disadvantages certain voters in their opportunity to influence the political process effectively.* In this context, such a finding of unconstitutionality must be supported by evidence of *continued frustration of the will of a majority of the voters* or effective denial to a minority of voters of a fair chance to influence the political process.[20]

Thus, the question becomes not simply whether the electoral college is exactly reflective of the majority will, but rather whether the distortions created by the electoral college amount to a "continued frustration of the will of a majority of the voters."

Finally, it is important to remember that the most fundamental difference between the redistricting situation and the electoral college is that, inasmuch as redistricting is a process that takes place entirely at the state level, the federalism concerns that serve as the justification for the electoral college's very existence are completely absent. Thus, there is no significant constitutional interest, perhaps other than a general concern for states' rights, that argues against the one-person, one-vote standard at the state level. In contrast, there is a very strong constitutional interest justifying the electoral college. Here, the analogy to the Senate is illuminating. At the height of the reapportionment revolution of the 1960s, the Court repeatedly struck down state apportionment practices that used non-population bases for the upper house, such as awarding state senate seats by county. The most forceful defense by the states was the argument that this practice essentially mirrored the division in the electoral bases of the

[17] 403 U.S. 1 (1971).
[18] Ibid., 4.
[19] Ibid., 6.
[20] *Davis v. Bandemer*, 478 U.S. 109, 133 (1986) (emphasis added).

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two houses of Congress. This argument was brusquely rejected by the Court, which found the Senate to be an integral part of a federal compromise that ensured the vitality of the states as compacting parties.[21] The U.S. Senate's extreme departure from the participatory equality premise of the apportionment cases corresponded to significant concerns regarding the federal structure and thus stood outside the growing force of constitutional majoritarianism. It is difficult to see why, as a matter of constitutional law or theory, the same would not apply to the electoral college.[22]

Constitutions and Fixed Rules

I do not want to leave the impression that there are no constitutional issues in the operation of the electoral college. Thus far, the argument has been that the electoral college is not constitutionally deviant for its non–directly majoritarian components, either as the Constitution was originally framed or as it has evolved through amendment and interpretation. Nonetheless, the electoral college has shown itself to be constitutionally defective in its operation, not because of its departure from direct majority will, but because of its failure to identify with specificity the implicit constitutional need for fixed rules to govern the electoral process. By way of illustration, I turn not to the obviously salient election of 2000, but to two elections in which electoral college defects nearly occasioned the collapse of the Republic.[23] In addressing this issue, it is useful to explore how Congress responded to the elections of 1800 and 1876. In both of these elections, the Constitution's ability to set out functioning procedures for presidential succession was directly at issue—and nearly failed. Both of these elections led to reform efforts, one in the form of a constitutional amendment,[24] the other in the statutory form of the Electoral Count Act.[25] Yet, as the 2000 election made clear, the problem of counting electoral votes is, to say the least, not altogether solved.

I will begin with the election of 1800. In that election, the presidential ballot featured: John Adams, a Federalist and the incumbent President; Thomas Jef-

[21] In *Reynolds*, the Court approvingly quoted a lower court finding that the comparison with the electoral college was inappropriate. "The analogy [between the U.S. Senate and the Alabama apportionment scheme] cannot survive the most superficial examination into the history of the requirement of the Federal Constitution and the diametrically opposing history of the requirement of the Alabama Constitution that representation shall be based on population. Nor can it survive a comparison of the different political natures of states and counties." 377 U.S. 548 (quoting *Sims v. Frink*, 208 F. Supp. 431, 438 [D.C.M.D. Ala. 1962]).

[22] See *Gray v. Sanders*, 372 U.S. 368 (1963) for a brief discussion of the analogy between state-level reapportionment and the electoral college.

[23] This is a condensed version of the argument presented in Samuel Issacharoff, "The Enabling Role of Democratic Constitutionalism: Fixed Rules and Some Implications for Contested Presidential Selection," *Texas Law Review* 81 (June 2003): 1861–1893.

[24] U.S. Const. amend. XII.

[25] Act of Feb. 3, 1887, ch. 90, 24 Stat. 373 (codified as amended at 3 U.S.C. §§ 5–6, 15–18 [2000]).

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ferson, a Republican and the incumbent Vice President; Aaron Burr, a Republican; and Charles Cotesworth Pinckney, a Federalist, although Burr and Pinckney were understood to be running for vice president.[26] Because of a technical defect in the balloting for president, Jefferson and Burr each ended up with 73 electoral votes, Adams with 65, and Pinckney with 64. This unintended tie[27] between Jefferson and Burr triggered Article II, Section 1, Clause 3 of the original Constitution, which provided:

> If there be more than one [presidential candidate] who have such majority, and have an equal number of votes, then the House of Representatives shall immediately chuse [sic] by ballot one of them for president. . . . But in chusing [sic] the president, the votes shall be taken by states, the representation from each state having one vote . . . and a majority of all the states shall be necessary to a choice.

The crisis arose because the Federalist Congress still in power was not inclined to vote in Thomas Jefferson, who had beaten their incumbent, Adams; and to vote in Burr would have made a mockery of the electoral process. Ultimately, however, the crisis passed without violence and the practice of presidential succession took hold in the young Republic. After thirty-five fruitless ballots, in which Jefferson received eight votes,[28] Burr received six, and two states did not vote, the Federalists finally relented. On the 36th ballot, Jefferson carried ten states, and became the third president of the United States.

The Twelfth Amendment cured the immediate cause of the crisis of 1800 by providing that presidential electors must vote for president and vice president by "distinct ballots." Ratified in 1804, and superseding Article II, Section 1, Clause 3 of the original Constitution,[29] the Amendment provides for separate presidential and vice presidential ballots, making it impossible for two candidates to have a numerical majority of the electoral votes. But the Amendment does not clarify the procedure for how to count the electoral votes. Like the original Constitution, the Twelfth Amendment provides simply that "the Presi-

[26] For a detailed discussion of the election, its electoral vote–counting process, and the days leading up to Jefferson's inauguration, see Bernard A. Weisberger, *America Afire: Jefferson, Adams, and the Revolutionary Election of 1800* (New York: William Morrow, 2000), 227–275; John Ferling, *Adams vs. Jefferson: The Tumultuous Election of 1800* (New York: Oxford, 2004), 162–196. I rely significantly on these works in the account that follows.

[27] Ibid., 256 ("The Republican managers had not made certain that one of their electors 'threw away' a second vote on someone other than Aaron Burr.").

[28] At the time, there were sixteen states in the Union; to win the presidency, therefore, it was necessary to have the support of at least nine states.

[29] Ibid. The superseded clause reads, in the pertinent part: "The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each. . . . The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed. . . . In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president." U.S. Const. art. II, § 1, cl. 3 (repealed 1804).

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dent of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted."[30] The ambiguity of this clause would lead to profound confusion in 1876.

The presidential election of 1876 pitted Rutherford B. Hayes, the Republican Governor of Ohio, against Samuel Tilden, a Democrat and Governor of New York. Tilden, like Al Gore in 2000, won the popular vote.[31] But when several states, including Florida, Louisiana, and South Carolina, turned in competing electoral slates, the composition of the electoral college, and with it the identity of the next president, was thrown into dispute.[32] Amid great partisan anger over the election being stolen, the nation confronted another procedural void in the mechanisms for presidential succession.

To meet the March 4 deadline mandated by the Twelfth Amendment, Congress needed to find a solution. The one Congress settled on was to establish an electoral commission, which would decide upon the contested credentials of the competing slates of electors in the disputed states. Through ill-fated partisan complications, it soon became apparent that the Commission had one more Republican on it than Democrat. Not surprisingly, the Commission resolved each electoral dispute in favor of Hayes by a margin of eight to seven along straight partisan lines. Although the Commission was seen by many to be completely fraudulent,[33] the Democrats did ultimately accept its results, and Hayes became president on March 4, 1877.

In the wake of the Hayes–Tilden debacle, Congress undertook to resolve finally the problem of the electoral count.[34] The ultimate result was the Electoral Count Act of 1887.[35] The Act has two major provisions. First, it provides that state law procedures in place prior to the election are binding on Congress if they produce a definitive result at least six days prior to the day when the

[30] In the original Constitution, there is a slight difference in punctuation. It reads: "The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted."

[31] Tilden won by approximately 250,000 votes. Vasan Kesavan, "Is the Electoral Count Act Unconstitutional?" *North Carolina Law Review* 80 (June 2002): 1653, 1688.

[32] For a detailed account of the period from the election, on November 7, 1876, to the contest's resolution, on March 2, 1877, two days before the inauguration date prescribed by the Twelfth Amendment, see Charles Fairman, Five Justices and the Electoral Commission of 1877 in Paul A. Freund and Stanley N. Katz, eds., *History of the Supreme Court of the United States*, Supplement to Volume VII (New York: MacMillan, 1988), 62–66; Paul Leland Haworth, *The Hayes–Tilden Disputed Presidential Election of 1876* (New York: Russel & Russel, reprinted edition 1966), 57–168.

[33] Note, for example, the words of one Congressman from Kentucky, as it became clear on March 2, 1877 that Hayes would be elected president: "Today is Friday. Upon that day the Saviour of the world suffered crucifixion between two thieves. On this Friday, constitutional government, justice, honesty, fair dealing, manhood, and decency suffer crucifixion amid a number of thieves." Haworth, *The Hayes–Tilden Disputed Election*, 280.

[34] For a discussion of previous attempts, see Kesavan, "Is the Electoral Count Act Unconstitutional?," 1664–1677; Samuel T. Spear, "Counting the Electoral Votes," *Albany Law Journal* 15 (1877): 156–159.

[35] Act of Feb. 3, 1887, ch. 90, 24 Stat. 373 (codified as amended at 3 U.S.C. §§ 5–6, 15–18 [2000]).

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electors are scheduled to meet.[36] At the very least then, Congress binds itself to accept electoral votes from states that resolve any internal disputes before this six-day window closes. Second, the Electoral Count Act provides a mechanism for resolving disputes over whether to accept votes of electors.[37] If only one return has been submitted from a state, then that return is accepted unless both houses of Congress, acting separately, agree that it should be rejected because the votes were not "regularly given."[38] If multiple returns are submitted, then Congress is to accept the return that conforms to the state determination under Section 5, the so-called safe-harbor provision. If the houses of Congress agree upon which of several returns is the proper one, it is counted. If the houses disagree, then the return that is "certified by the executive of the state" is counted.[39]

It is worth at least noting that the "fix" following the election of 1876, unlike that which followed the election of 1800, was a statute rather than an actual amendment to the Constitution, ratified according to the procedural mechanisms laid out in Article V. This raises the possibility that the Electoral Count Act could in theory be unconstitutional,[40] whereas the Twelfth Amendment by definition cannot be. Indeed, whether Congress has the power to bind future Congresses to a particular way of counting electoral votes was controversial then,[41] as it is now.[42] Moreover, as a statute subject to repeal by a simple majority, it is possible that the Electoral Count Act simply might not command the respect of all institutional actors in a moment of crisis such as would be accorded a constitutional provision. Although a matter of conjecture, it is possible that the Supreme Court may have felt more at liberty to intervene in the Florida electoral crisis precisely because the Constitution does not prescribe a way to resolve electoral count disputes. The Electoral Count Act had never been applied or construed by the Supreme Court before the *Bush v. Gore* litigation; and while 3 U.S.C. § 15 loomed in the background as the possible final mechanism for resolving the 2000 election, it never came to be interpreted in the courts or employed in Congress.

[36] 3 U.S.C. § 5.

[37] Ibid., § 15.

[38] Ibid.

[39] Ibid. For a fuller discussion, see Samuel Issacharoff, Pamela S. Karlan, and Richard H. Pildes, *When Elections Go Bad: The Law of Democracy and the Election of 2000* (New York: Foundation Press, revised edition, 2001), 25–26.

[40] For a contemporary argument that the Electoral Count Act is, in fact, unconstitutional, see Kesavan, "Is the Electoral Count Act Unconstitutional?," 1653, 1688.

[41] Spear, "Counting the Electoral Votes," 159 (referring to an 1875 attempt by Congress to regulate the electoral count: "The bill, had it become law, would have commanded every future Congress upon which might devolve the duty of counting the electoral votes, to conduct the count in a particular way, to conform to a certain rule in respect to the right of debate in each house, and to settle all disputed questions in a particular manner. This, upon its face, is just what no Congress can do in respect to another.").

[42] Kesavan, "Is the Electoral Count Act Unconstitutional?" 1780 ("The Electoral Count Act clearly violates the anti-binding principle of rule-making.").

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This is, I think, one of the most important lessons to be learned from the 2000 election. As with baseball, it is essential that the rules of presidential selection be, insofar as possible, fixed *ex ante*, and that they have the respect of all relevant actors. In the case of the 2000 election, the rules of dispute resolution, while fixed *ex ante*, were not sufficiently respected by all the parties concerned. As a result, the Court, unwisely, in my view, felt free to disregard the existence of the procedures set forth in the Electoral Count Act and instead elected to devise its own solution to the dispute. Had the Court accepted the centrality of clear pre-existing rules of engagement, it would have had to address the Electoral Count Act as more than an abstract commitment to rules in place prior to Election Day. Central to the statutory design is an anticipation that disputes over the proper slate of electors from a state may arise and with them a corresponding delegation of responsibility to Congress as the institutional actor best suited to resolve disputes.[43]

The great unanswered question of Election 2000 may prove to be not the doctrines according to which the Court intervened, but the timing of the Court's intervention and the seemingly willful disregard of Congress, a political branch that might conceivably have a say in the resolution of a first-order political controversy. Although a matter of conjecture, it is nonetheless possible to speculate that the Court might not have so readily disregarded the institutional assignment of responsibility to Congress had the post-1876 recommitment taken the form of a constitutional amendment rather than a statute.

A Secondary Fix

As I mentioned at the outset, I think there is one aspect of our system of presidential selection in which principles of constitutional law might have some application, and that is the method by which states choose to allocate their electoral votes among candidates. Nothing in the Constitution addresses how the electors are to be apportioned and, indeed, Article II, Section I leaves such matters firmly in the hands of the states. Forty-eight states and the District of Columbia apportion their electors on the basis of a system in which the winner of the popular vote in a state receives all that state's electoral votes. That is, regardless of the size of the margin between the top two finishers, the winner receives all the state's votes, and the second-place finisher receives nothing. Thus, in 2000, Al Gore was awarded all five of New Mexico's electoral votes, despite receiving only 366 more votes than George W. Bush and failing to achieve even a simple majority of the popular vote in the state.[44]

Only two states reject the winner-take-all approach. In Nebraska and Maine, the statewide winner receives the two electoral votes corresponding to the state's

[43] This argument is developed more fully in Samuel Issacharoff, "Political Judgments," *University of Chicago Law Review* 68 (Summer 2001): 637.

[44] Statistics from the 2000 election are taken from Michael Barone and Richard E. Cohen, *Almanac of American Politics 2002* (Washington, DC: National Journal, 2001).

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two senators. The other electoral votes—corresponding to the state's representatives—are given out, on an individual basis, to the winner of the popular vote in each congressional district. In practice, this system has proven to be no different from the winner-take-all approach for these two states, inasmuch as neither Nebraska nor Maine has ever divided its electoral votes between candidates.

The impact that the winner-take-all system has on our presidential campaigns is significant, particularly when one examines the manner in which candidates allocate their resources. Because the margin by which a candidate wins a state is irrelevant, campaigns focus their resources almost exclusively on those states in which polls indicate that the race is still close. As a result, states that are considered safely "out of play," no matter how large their electoral delegations may be, are ignored by the candidates. In 2000 and 2004, Texas and New York were both written off by the two major campaigns even before the race began. Candidates do not spend time or resources in these states because the outcomes in them are virtually preordained; the Democratic nominee has carried New York in every presidential election since 1988, while the Republican has carried Texas in every election since 1980. In fact, a report conducted soon after the 2000 campaign concluded that neither the candidates nor their respective parties or allied interest groups spent any money whatsoever advertising on television in Texas or New York.[45] Voters living in the New York media market were bombarded with television commercials for Senate races in New York and New Jersey and for various congressional races around the region, but did not see a single advertisement for the presidential campaign.

Yet even more dangerous than the effect that it has on the distribution of the candidates' time and resources is the effect that the winner-take-all system has on the issues that dominate campaigns. In 2000, few states were more important to determining the result of the presidential election than Florida and Pennsylvania. Coincidentally, those two states have the highest percentage of individuals aged sixty-five or older.[46] As a result, issues affecting seniors seemed to dominate the 2000 presidential campaign. Of course, seniors are a critical voting block in any election, but the attention paid to issues primarily affecting seniors in 2000 dwarfed that of previous presidential races. An overseas observer watching the two candidates might conclude that the two most pressing issues facing the United States in 2000 were how to create a prescription drug benefit for the Medicare program and how to protect the so-called Social Security surplus.

Thus, the prevalence of the winner-take-all system may have a far more distorting impact on the nature and outcome of campaigns than does the electoral college itself, even if the result is masked behind the apparent immutabil-

[45] Craig B. Holman and Luke P. McLoughlin, *Buying Time 2000: Television Advertising in the 2000 Federal Elections* (New York: Brennan Center for Justice, 2002), 85.

[46] U.S. Census Bureau, "Population and Ranking Tables of the Older Population for the United States, Puerto Rico, Places of 100,000 or More Population, and Counties," 3 October 2001, accessed at http://www.census.gov/population/cen2000/phc-t13/tab02.pdf, 25 August 2002.

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ity of counted votes. There are two lines of constitutional and even statutory law that may call into question the use of winner-take-all assignment of electors for the electoral college. First, following on the ultimate justification for *Baker v. Carr* and the subsequent reapportionment cases, this is an area in which there is no political incentive for any state to move away from the winner-take-all system. States that are consistently competitive benefit because the system guarantees that presidential candidates will lavish attention and resources on them. Yet even states that are rarely competitive have little incentive to do away with winner-take-all, because, under the current system, the dominant party in the state has to expend very little in the way of resources to be guaranteed all the state's electoral votes. If Texas had decided to adopt the system used in Maine and Nebraska, George W. Bush would have received ten fewer electoral votes from the state in 2000. It is obvious why Texas Republicans would never agree to such a change. Indeed, following the 2000 election, despite a variety of calls for states to change the manner in which they distribute their electoral votes, no state made a serious effort to move away from the winner-take-all approach.

Finally, unlike the case of the electoral college itself, there may be constitutional principles at stake in the winner-take-all system. The constitutional argument against the electoral college rests on the belief that it is inconsistent with a notion of majoritarianism that, as had already been pointed out, is nowhere enshrined in the Constitution and is, in fact, undermined by a variety of other constitutional institutions and processes. The argument against the winner-take-all system is not that it is inconsistent with notions of majority rule, but rather that it gives the majority too much power. The constitutional design exhibits greater concern over the excesses of majority power resulting from the risks of unbridled majority rule than it does over protecting the notion of majority rule itself. This is evident in the distinct structural features of the American Constitution, including separation of powers, different terms of office and electoral bases for the House and Senate, the requirement of presentment for legislation, the practice of judicial review, and the structures of federalism. These structural arrangements reflect James Madison's well-known concern over the risk of democracy succumbing to passion and the resulting capacity for majoritarian oppression, what he termed the risk of "faction."[47]

Most directly relevant is the several decades of case law under both the Constitution and the Voting Rights Act rendering suspect at-large electoral systems. Through these cases, federal courts have dismantled local electoral systems that systematically overreward majorities who vote along racial lines, while denying a corresponding opportunity for representation to the minority.[48] The direct application of this body of law to the electoral college is by no means

[47] Clinton Rossiter, ed., *The Federalist, No. 10* (James Madison) at 83 (New York: New American Library, 1961).

[48] See Chandler Davidson and Bernard Grofman, *Quiet Revolution in the South* (Princeton, NJ: Princeton University Press, 1995).

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clear. But oddly, the way the electoral college operates in most states may be legally vulnerable not for an insufficient commitment to majoritarianism, as Dahl would argue, but for an excess of rewards to majorities.

Conclusion

It would be presumptuous to come before a gathering of political scientists to explain that in the manner of very basic social choice insights, all rules shape outcomes. By way of conclusion, I would suggest the following about the history and constitutional role of the electoral college:

- The actual electoral impact of the electoral college has been minimal. Only once, in 1876, has a candidate arguably holding a clear popular mandate been denied the presidency as a result of the vote in the electoral college.
- The constitutional argument against the electoral college must fail. Not only was the electoral college specifically created by the Constitution, but it is by no means an aberrant institution in the broad constitutional design.
- The power to regulate the electoral college at the federal legislative level is exceedingly small. Not only was the electoral college created at the constitutional level, but the clear command of Article II, Section 1 is to give oversight over the selection mechanism to state legislatures, and not to Congress.
- There is, however, a distinct federal interest in well-established, orderly rules of engagement for the electoral process, and an interest in having those established prior to self-interested actors seeking to manipulate them.
- In response to the failure and controversy in 1800, Congress began the amendment process leading to the Twelfth Amendment. That successfully addressed one unanticipated issue in legitimate presidential succession.
- In response to another failure and controversy, in 1876, Congress responded statutorily to force the states to settle their electoral practices before the presidential election and to certify the slate of electors prior to a fixed date. That statute failed to direct the conduct of the Supreme Court in 2000. It is at least conceivable that the difference between the success of the Twelfth Amendment and the disregard of the procedures of the Electoral Count Act may be attributable to the latter not having the stature of a constitutional amendment.
- The one feature of the electoral college that seems most vulnerable under current law is the overreward of majorities as a result of the winner-take-all system in use in all states but two. Although less visible than the impact of the electoral college when the lead vote-getter does not win the presidency, this feature of the electoral college may have the most pronounced and most deleterious effect on presidential politics.*

* I am indebted to the excellent research assistance of Michael Fischer.

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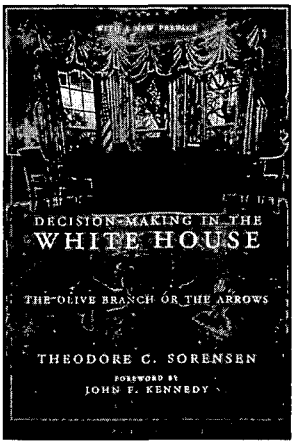

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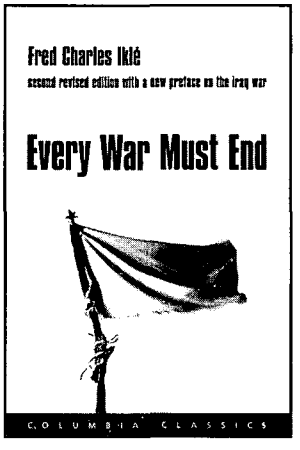

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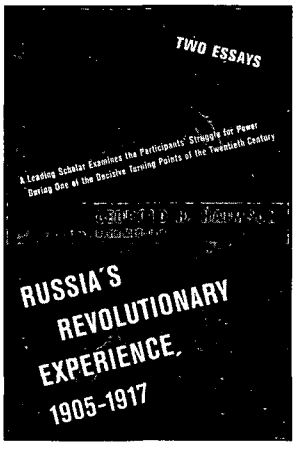
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Book Reviews

America Alone: The Neo-Conservatives and the Global Order *by Stefan Halper and Jonathan Clarke. New York, Cambridge University Press, 2004. 382 pp. $28.00.*

So much has been said about the neo-conservatives and their influence on American foreign policy that one may wonder whether more is needed. But this account is enriched by the unusual perspectives of its authors. Both are former diplomats and are truly Anglo-American. Stefan Halper is now at Cambridge, but served in the administrations of Richard Nixon, Gerald Ford, and Ronald Reagan; Jonathan Clarke was a British diplomat and is now at the Cato Institute. They, then, write as critics, but sympathetic ones, and as not only former diplomats, but conservative ones.

The basic theme is quite familiar: the neocons believe in a strange combination of force, ideas, and morality. For the good of the world as well as itself, America must assert its hegemony, ensure that no peer rival arises, and see that smaller states (and now nonstate actors) do not disturb the American order. Military power is essential to this task, and fortunately modern technology enables the United States to deploy "smart weapons" with great effect and minimum loss of civilian lives. Few neocons have had military experience, which may partly explain their enthusiasm for this instrument. Many have advanced degrees, which may help explain their belief that ideas are also crucial, if not in persuading foreign audiences then in the battle for control of American policy and society. For other countries as well, foreign policy follows from domestic politics, and so a prime objective of the United States must be to spread democracy. In all three conceptions, neocons diverge from standard realist thought from Thucydides to Kenneth Waltz, observers who argue that force is only one instrument of foreign policy, that interests often overwhelm ideas, and that the external environment usually is more important than a state's domestic system in determining its external behavior.

Neocons cannot claim as illustrious a pedigree as this, but they do claim a patron saint in the form of Ronald Reagan. As conservatives, Halper and Clarke vigorously dispute this claim, arguing, on the whole convincingly, that Reagan was more pragmatic than ideological, that he was very reluctant to use force, that his instinct on most issues was to search for a compromise, and that he

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did not foreclose dissent. Indeed, while the neocons originally were enthusiastic about Reagan, they soon became disillusioned, and from their perspective, this reaction was justified.

In perhaps their most important contribution, Halper and Clarke show that the common perception of the neocons as a coherent group is wrong, not because the differences among them at any one time are so great but because there is a sharp generational divide between the Cold War–era neocons (e.g., Irving Kristol, Norman Podhoretz, Jeane Kirkpatrick) and the younger group now so much in the news (e.g., William Kristol, Robert Kagan, Charles Krauthammer). While a few people, such as Richard Perle and Paul Wolfowitz, span the two periods, the distinction captures differences in both personnel and opinions. The old neocons were fiercely anti-Soviet and skeptical of the willpower of the Europeans, but they were not set on American hegemony and were even less enthusiastic about the necessity and prospects for spreading democracy to the Third World. The new neocons were energized by what they saw as Bill Clinton's feckless policy in the Balkans, something that now seems a sideshow, but that crystallized both their faith in the use of force and their driving morality. Halper and Clarke also argue that the new generation is distinguished from its predecessor by its general pessimism. Here I disagree. Current neocons want to rid the world of evil and believe that democracy can triumph everywhere, bringing with it peace, prosperity, and all other good things. Such a radical vision can hardly be called gloomy. Their final judgment is harsh: the new generation represents a "sad decline" from their predecessors, "men and women of great intellectual gifts. Today we are left with predictable polemicists" (p. 306).

The authors of course discuss the war in Iraq and, consistent with their general perspective, condemn it for all the well-known reasons. But they are on shakier ground in explaining it. Consistent with their focus on neocons, they argue that in the wake of September 11, this group "hijacked" American policy (p. 139). They are correct to argue that the neocons' pre-formed ideology gave them a clear, consistent, and confident policy line when others lacked ready alternatives, but neither they nor anyone else has explained how Dick Cheney, Donald Rumsfeld, Condoleezza Rice, and George W. Bush were persuaded by a group of second-level bureaucrats, no matter how articulate.

The book is also a bit longer than it needs to be, with the inclusion of a few extraneous, if interesting, chapters. Although the authors touch on policies toward Israel, they might be faulted for not tackling head-on the sensitive question of whether the neocons are excessively driven by their perceptions of what is in Israel's interests. But at a time when so much that passes for analysis is one-sided and polemical, *America Alone* is insightful and welcome. It is a timely contribution that I think will have a longer half-life than most books of this type.

ROBERT JERVIS
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What We Owe Iraq: War and the Ethics of Nation Building *by Noah Feldman. Princeton, NJ, Princeton University Press, 2004. 200 pp. $19.95.*

A classically failed state is characterized by brutal competition over power and resources. When it became clear in 2003 that the American occupying forces had no plan for either pacification or statecraft, and that they were determined, willy-nilly, to create a political vacuum within which the three central constituencies of the old Ottoman and British colonial state would be compelled to contend for primacy, an internal war erupted. Had the Sunni, ex-Baath, faction believed that it would be treated fairly, even plausibly well, in post-Saddam Iraq, the continuing bloodbath might have been forestalled, even avoided. Instead, as Noah Feldman astutely notes, the hapless, Arabic-illiterate American overlords soon failed the test of legitimacy (Feldman would say "ethical authority"). That enabled Ayatollah Ali Sistani, leader of the Najaf hawza and presumptive lead Shi'i cleric, cannily to promote the Shi'i cause by asserting his own moral claims to national and situational legitimacy. Once that legitimacy had been established, he demanded early elections of a kind that would favor Shi'a and leading clerics like himself. Devoid of moral authority because of their failed occupation and the lack of any international sanction for the original war, the coalition provisional authority was compelled to cede primacy to Sistani and his cohorts. Sunni legions naturally became alarmed. Conflict followed inexorably.

Feldman puts the Iraqi imbroglio into a framework of ethical responsibility. He also wants to view the failed occupation as a self-protective effort to nation build out of, or up from, failure. The self-protective nature of that nation building reflects enhanced security for the United States in an era of terror. Feldman seems willing, on ethical grounds, to justify the war and the occupation if, in fact, a passably liberal democratic state emerges from the rubble of post-Saddam weakness and chaos. The attempt to place the Iraqi adventure within such a carefully argued philosophical construct succeeds less well, however, than Feldman's sensible analysis of the dynamics of rivalry within 2003–2004 Iraq.

Early on, Feldman concludes, appropriately, that "the Iraqi war must be counted as the most misbegotten and self-contradictory foreign policy blunder in at least a generation." Saddam's strong state has been replaced by a weak state vulnerable to terrorist pressures. "The primary explanation," writes Feldman, "for U. S. pursuit of the extraordinarily difficult—not to say quixotic—task of creating in Iraq a multiparty, federal democracy ... is that the United States sought to produce an Iraq that will not contribute to increased global insecurity" (p. 18).

The primary explanation for U.S. folly is more likely to have been oedipal and domestically electoral. Once mired in the quicksand of Iraq, too, the resulting paradox of a well-intended policy going awry is the rise of lasting global insecurity, the loss of U.S. soft power and world legitimacy, and the creation in Iraq of a failed state with ambitious nonstate actors.

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By the time that this review is printed, Iraq will or will not have held an election under conditions of marked insecurity. But even if a poll has occurred, in at least some sectors of the Sunni heartland, any Shi'i majority or plurality will have become a source of renewed combat, hardly of stability. As Feldman rightly asserts, elections are a beginning, not an end point, in nation building. They incite competition, not conciliation, among contending parties. Because, in this case, they do not presage the burgeoning of a liberal democracy, or even stability, they may merely serve as an ethically unwarranted justification for a desperate American exit.

ROBERT I. ROTBERG
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The Colonial Present: Afghanistan, Palestine, Iraq *by Derek Gregory. Malden, MA, Blackwell Publishers, 2004. 367 pp. Cloth, $59.95; paper, $27.95.*

Geopolitics returns to geography, dialectically. During a phase now largely past, North American geographers strove to make their discipline a sort of applied economics, with central place theory its organizing principle. The next round of work reacted strongly to the model-building realism of its predecessor, plunging into epistemological doubt, and reaching for culturally grounded depictions of place as the context for social action while examining formal representations of space as tools of power. That was the antithesis. With Derek Gregory's analysis of Western interventions in the Middle East, we get a new sort of geographic synthesis, in which the violent visions of conquerors reshape political relations and life experiences on the ground. Gregory speaks of the "colonial present" rather than using the currently fashionable term "empire." He does so to focus readers' attention on continuities between older and newer colonial interventions in Afghanistan, Palestine, and Iraq, then to infer a more general analysis of the United States's changing relation to the rest of the world. In that he largely succeeds. Using 11 September 2001 as a pivot and the U.S.-led war on terror as an object of explanation, Gregory traces successive Western efforts to control the Middle East, with special reference to the three regions. Edward Said's idea of "imaginative geographies" serves Gregory repeatedly to represent the expression of naked interest by means of territorial designs. But those designs do not simply camouflage evil intentions, argues Gregory; they alter geopolitical realities. They facilitate *locating* (reducing humanly occupied sites to points in a grid), *opposing* (dividing the world starkly into us and them), and *casting out* (excluding everyone but us from the benefits of modern humanity). They thereby transform the lives of the designers, the victims of their designs, and links between the two. Gregory makes his case with embellished analytical narratives of recent history in Afghanistan, Palestine, and Iraq. The narratives qualify as embellished through their unceasing references to literary treatments of their subject and their repeated reliance on telling quotations. They qualify

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as analytic because, step by step, they connect spatial representations to the exercise of political power. In powerful prose, Gregory tells an unpleasant story. Through a process he fails to describe or explain, the United States redirected toward world conquest the vast military power it had originally built up to contain a belligerent Soviet Union. Along the way, he suggests that American rulers somehow acquired a commitment to a "national security state." They sought new justifications and outlets for that sort of regime, Gregory tells us, as the Soviet bloc declined and then disintegrated. But that part of Gregory's story remains undeveloped and undocumented. In any case, the United States had long since aligned itself with Israel's imaginative geography, which treated predominantly Arab sections of Palestine as dangerous areas to be settled or pacified at all costs. Such a geography included blank areas—zones of invisibility—in which both Israel and the United States denied that devastation was occurring. With the attacks of 11 September 2001, after some wavering, the United States redrew its imaginary Middle Eastern maps in two fundamental ways: by equating the danger zones of Afghanistan, Palestine, and Iraq, all defined by the war on terror; and by populating those zones with threatening Muslims. Gregory draws a chilling analogy: Primo Levi's *der Muselmann,* the prisoner in a Nazi death camp reduced to a desperate fight for sheer survival. Blending outrage and disciplined intelligence, Derek Gregory has written a bitter, epic poem.

CHARLES TILLY
Columbia University

Democratic Challenges, Democratic Choices: The Erosion of Political Support in Advanced Industrial Democracies *by Russell J. Dalton. New York, Oxford University Press, 2004. 300 pp. $45.00.*

Russell Dalton provides the first full-fledged cross-national treatment of trust in institutions in this ambitious volume. We know much about such trust in the United States from the work of Jack Citrin, Arthur Miller, John Hibbing and Elizabeth Thiess-Morse, David King, and Mark Hetherington—as well as cross-national studies such as the *Beliefs of Government* series, Kenneth Newton and Pippa Norris's edited volume, *Disaffected Citizens*, and parts of Ronald Inglehart's works. Dalton seeks to bring all of this literature together in a comprehensive treatment of how people in advanced industrial societies evaluate their governments. His work is a tour de force in its breadth and in the scope of evidence he amasses. But it will be controversial: I find much to like here but also disagree with some of his key points.

Dalton amasses a large amount of survey data, previously not brought together in a single analysis. He gathers national surveys (as well as Eurobarometers and the World Values Survey) for almost twenty Western democracies. He considers political trust generally, support for democracy, faith in

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institutions, backing for the authorities in power, and faith in community (national pride). He also considers the consequences of political support in terms of conventional and unconventional participation. This is *the* most comprehensive cross-national discussion of democratic support.

Not only does Dalton consider many different kinds of support for democracy, but he also examines a wide range of explanations for the declining trust he finds across almost every Western democracy. The explanations include demographic change (younger people are less trusting, but educated people are more trusting); social capital (group membership and social trust); economic evaluations; value change (postmaterialism); the increasing polarization of our political parties; and the expanding role of groups in politics. He finds only limited support for demographic changes and economic evaluations—the correlations with the various dimensions of political trust are generally small, except that sociotropic evaluations shape evaluations of incumbents. The rise in postmaterialism has limited effects overall, but does shape attitudes toward institutions of authority (such as the police). Party polarization has moderate effects upon trust in government in the few cases in which Dalton is able to measure (rather ingeniously) divisions between voters and politicians. The biggest effects come from the expanding interest group universe, making the political system more complex and multidimensional. This is a compelling argument, even if the data are limited.

I do have reservations, however. First, Dalton tries to cover a monstrous amount of ground in 187 pages of text. There are too many dimensions of political support to present a crisp argument. Second, Dalton simply follows Robert Putnam's *Bowling Alone* when he expects group membership and social trust to shape political trust. The link is not so clear, as I argue in *The Moral Foundations of Trust*. Third, in minimizing the link between economics and trust in government, he does not consider the link between economic evaluations and support for incumbent politicians (see Robert S. Erikson et al., *The Macro Polity*) and in turn, how trust in government largely reflects faith in incumbent leaders (see Citrin and my *Moral Foundations of Trust*, chapter 5). There may be a more complex story than Dalton presents. Fourth, the group effect does not guarantee a multidimensional policy space. In the United States, cultural and economic issues seem to be converging into very distinctive party coalitions.

Finally, one small nit to pick: Dalton (p. 153) attributes the famous political question, "What have you done for me lately?" to Lyndon B. Johnson. The quote belongs to former Senator and Vice President Alben Barkley.

These reservations aside, Dalton has written a very important book. It will become a landmark in the study of political support.

ERIC M. USLANER
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Ordinary People in Extraordinary Times: The Citizenry and the Breakdown of Democracy *by Nancy Bermeo. Princeton, NJ, Princeton University Press, 2003. 272 pp. Cloth, $60.00; paper, $19.95.*

This impressive and engaging book tackles important theoretical questions related to the breakdown of democracy. As her title indicates, Nancy Bermeo chooses to focus on "ordinary people," and she delivers a careful empirical assessment of their role in times of democratic crisis. Her work provides a firm foundation for reshaping the debate about the causes of democratic breakdown.

Bermeo builds her argument and explanation on two main criticisms of the existing social science literature on the collapse of democracy. First, she points out that "the spotlight has fallen most often on political elites" (p. 3), with the result that we remain in the dark about the role of ordinary people during the extraordinary times of democratic crisis. Second, she claims that the "common wisdom" account of democratic breakdown places blame on ordinary people, who are viewed as abandoning democracy and turning to various nondemocratic extremes. In other words, even though ordinary people have not been the object of much empirical scrutiny, they are said to figure prominently, and negatively, in the conventional explanation for the collapse of democracy (p. 63).

Bermeo seeks to rectify both of these shortcomings by showing that most ordinary people have remained loyal democrats, even in times of democratic upheaval, and that it was actually political and military *elites* who were responsible for the decisions that led to the destruction of fragile democratic institutions. In that sense, by overturning the mistaken understanding about the responsibility of ordinary people, Bermeo's findings indirectly justify restoring the "spotlight" to the elite level.

The book's first chapter consists of a theoretical synthesis of various debates connected to the "literature on democracy" (p. 7). With conceptual and stylistic ease, Bermeo weaves together a nuanced and insightful discussion of civil society, ordinary citizens, and political parties. She also introduces the crucial conceptual distinction between "the highly visible polarization of civic groups in public spaces and the less visible polarization of opinion expressed in elections and in polls" (p. 20). The rest of the book goes on to show that the latter type of polarization is much less typical than is commonly believed, whereas the former has usually been decisive.

The empirical portions of the book incorporate a broad and rich cross-regional and cross-temporal analytic perspective. The second chapter sweeps through thirteen cases of interwar democratic breakdown, highlighting the mechanisms by which fragile institutions failed to meet the domestic and international challenges they faced. And although the presentation of each of these cases may seem a bit repetitive at times, the evidence appears overwhelming: in every case—including the frequently cited case of Weimar Germany—Bermeo shows that ordinary people did *not* abandon democracy in favor of polarization.

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The chapter about interwar Europe is followed by in-depth case studies of postwar democratic collapse in Brazil, Uruguay, Chile, and Argentina. These four chapters constitute the bulk of the volume, and they allow Bermeo to develop her causal argument about polarization in much greater detail. Finally, Bermeo's provocative and wide-ranging conclusion puts her arguments into a broader and more contemporary context.

Overall, this book is an exemplary work of comparative politics. It is elegantly written, and contains innovative theoretical arguments, sound historical research, and broad and compelling empirical comparisons. The one difficulty with the argument involves the tension between the importance of ordinary people and that of elites. This tension starts with the title, which suggests a book about ordinary people as heroes of democracy. But the argument is ultimately much more modest in scope than its initial framing suggests: ordinary people may not have supported or caused the collapse of fragile democracies, but they could not save them either. And although Bermeo shows convincingly that ordinary people are not democratic deserters, in the end, it becomes clear just how powerless they are in the face of determined, divided, and destructive elites.

MARC MORJÉ HOWARD
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Deliberation Day *by Bruce Ackerman and James S. Fishkin. New Haven, CT, Yale University Press, 2004. 288 pp. $30.00.*

By all accounts, civic engagement in America is on the wane. What can be done to reverse this trend? Bruce Ackerman and James Fishkin offer a provocative and novel solution to what they believe is this crisis of democracy. In *Deliberation Day*, they propose the creation of a two-day national holiday for structured debate of the political issues at stake in presidential elections (and perhaps congressional elections as well). During this "Deliberation Day," potential voters would be paid a substantial sum of money to meet with their fellow citizens, listen to national party leaders answer questions generated by ordinary Americans, and debate critical issues. Citizens would not be asked to vote for a particular candidate, but would come away from Deliberation Day more engaged with the substance of politics.

The ideas at the core of this book are good ones. Research on reform of electoral laws has shown that making it easier for people to vote will only marginally increase political participation. To truly broaden the scope of participation in America, reformers need to focus instead on increasing political interest and engagement. Building on deliberative polling experiments, Ackerman and Fishkin show that structured political discussion can achieve this goal. When people discuss political matters in such an environment, they sometimes change their minds, but always become more interested in politics.

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In the end, the deliberative format would lead to a citizenry that is not only more informed, but one that is more engaged and civically minded.

The tricky part of Ackerman and Fishkin's proposal would be moving from the small-scale deliberative polls conducted over the last decade or so to a large-scale political event involving tens of millions of Americans. Ackerman and Fishkin essentially propose to run a series of simultaneous mini-deliberative polling events across the country before the presidential election. Deliberation Day would be expensive—costing almost three billion dollars every four years (including the costs paid to participants). But in the second half of the book, Ackerman and Fishkin make the case that the gains for American democracy outweigh this high price. They argue that Deliberation Day would allow Americans to fulfill their citizenship responsibilities and enable ordinary men and women to take an active role in democratic government.

Although provocative, *Deliberation Day* has its flaws. The book is overly long. Ackerman and Fishkin could have made their case more effectively had they tightened their argument. It is certainly important to lay out the details of Deliberation Day, but the blow-by-blow coverage in the first half of the book borders on overkill. More importantly, the book seems to misrepresent the modern electoral environment. Ackerman and Fishkin decry the poll-driven choices that politicians make in the modern political system, but recent research suggests that politicians are not slaves to polls. Rather, they use polls to frame their appeals to voters. Deliberation Day might change the political system at the margins, but many of the inadequacies of the current system identified by Ackerman and Fishkin predate television, political polling, and the "sound bite" culture. Deliberation Day probably would not be the magic balm for democratic society that Ackerman and Fishkin envision. Politicians, after all, are quite adept at adapting to changes in the political environment, as the 2004 presidential election campaigns demonstrated. Soft money may have been legislated out of existence, but "527 groups" quickly rose to take its place.

These faults aside, *Deliberation Day* is an interesting and provocative book, one sure to stimulate discussion in undergraduate classes about important political issues. This book advances an important and timely agenda. For that, it deserves praise.

ADAM J. BERINSKY
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Dismantling Democratic States *by Ezra N. Suleiman. Princeton, NJ, Princeton University Press, 2003. 368 pp. Cloth, $50.00; paper, $19.95.*

Ezra Suleiman explores the impact of attempts to "reinvent government" on the functioning of democracy. Improving the efficiency of government administration has been a popular political theme since the early 1900s. The book, however, focuses on the period since 1980, when a powerful new blueprint for

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government and administrative reform appeared, known as the New Public Management (NPM). This agenda, which "basically seeks to align organizational methods of the public sector to those of the private sector" (p. 123), became most prominently associated with Margaret Thatcher and Ronald Reagan. However, the core ideas—reductions in the size, role, and autonomy of bureaucratic structures, privatization, and decentralization—were so influential and were advocated to such an extent by international organizations, that even countries like Sweden and Germany were not immune.

Concerned by these cutbacks, Ezra Suleiman scrutinizes the viability of democratic government "without an effective instrument at the hands of legitimately elected political leadership" (p. 6). The analysis relies primarily on extended case studies of the United States, Japan, France, Germany, Spain, and Britain. The author also mobilizes an impressive array of examples of bureaucratic reform in other countries, to great effect.

Along the way, Ezra Suleiman's subtle and sophisticated work also explores the variation in policies associated with the NPM blueprint. By comparing bureaucratic reform across countries, he demonstrates that the supposedly universal package of reforms advocated by NPM was rarely adopted in full. More often, states adopted a part of the agenda, such as cuts in public employment or decentralization. Moreover, the actual accomplishments varied greatly among countries and were not necessarily related to the enthusiasm of politicians for government reform. Why then, the book asks, did NPM have such varied impact?

Throughout the text, this question confronts the reader as the author carefully traces the successes of NPM in various settings and its failures in the most reluctant reformers—France and Japan.

Several answers are offered. In New Zealand, the most aggressive reformer, the politics of reform was structured by institutional differences that made it possible to advance radical reforms through Parliament without opposition. France was a reluctant reformer because its republican principles were at odds with the efficient, client-oriented approach to government at the heart of NPM. Similarly, the Japanese view of bureaucracy as "a bulwark against social disintegration" (p. 168) ruled out efficiency-based reforms that would erode the elitism of the adminstration. Ultimately, the author contends, the success or failure of NPM had to do with the importance that nations "historically accorded the public space in society" (p. 313). In other words, countries like Japan and France were historically committed to maintaining a cohesive society in the face of increasing demands from particular interests. Countries like the United States, instead, were losing a sense of public space, to the point of nostalgia for "a greater feeling of belonging . . . and community" (p. 313).

In fact, the author argues, the policies associated with NPM represent a serious threat to democracy. The most serious effects of NPM, according to Suleiman, can be seen in two prominent dynamics of the twentieth century: the frequent weakening of capable professional bureaucracy through the privatiza-

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tion of government services, and deprofessionalization and politicization of the bureaucracy itself. In a curious paradox of NPM, because of the reductions in personnel and the politicized nature of the remaining bureaucracy, attempts to make government less wasteful and more efficient deny the state the professional resources needed to serve the public. Recent events, such as September 11, he contends, have made the need for a reexamination quite clear.

ROGER SCHOENMAN
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Regions and Powers: The Structure of International Security *by Barry Buzan and Ole Wæver. New York, Cambridge University Press, 2003. 564 pp. Cloth, $90.00; paper, $32.99.*

Traditional international relations theory holds that the global system affects all constituent units and actors in similar ways and that anarchy makes war an ever-present possibility and dramatically limits the prospects for cooperation. Systems-level theory, however, is hard-pressed to account for the dramatic range of variation across different areas of the world. Although some parts, such as the Middle East, may resemble Hobbes's state of nature, with seemingly intractable conflict, other parts, such as western Europe have enjoyed a remarkable "long peace" and have established stable security communities in which the use of force seems nearly inconceivable. Likewise, purely country-level perspectives are too limited, inasmuch as they fail to capture how relations with other actors affect a state's security.

Barry Buzan and Ole Wæver argue that international relations are best analyzed by seeing the world as composed by several subsystems or security complexes, each with different constellations of important actors and their own separate dynamics. Although superpowers, such as the contemporary United States, can wield influence across the globe, regional powers, such as South Africa, dominate regional affairs and security issues without being great powers in a global sense. The first part of the book outlines a framework for analyzing regional security complexes (RSCs). Unlike authors who focus on the particularities of security issues in specific regions, the authors of *Regions and Powers* develop an explicitly comparative framework in which different regions can be compared and analyzed with respect to a general theory. Security complexes are defined by interdependence among actors, and these are inherently regional, inasmuch as the boundaries of interdependence are shaped by geography and proximity. The authors emphasize how relations within an RSC at any given point in time are defined both by material factors, such as the distribution of power and state capacity, as well as by more socially constructed patterns of rivalry and compatibility. RSCs can, over time, be transformed either by internal processes (e.g., changes in power, integration, or regime change) or by external processes such as boundary changes (e.g., splits and mergers) and outside

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interventions. The second part—which constitutes over two-thirds of the book—applies the theoretical framework to reinterpret the history of particular RSCs and discuss possible future scenarios.

Overall, this is an impressive book with an ambitious scope. The case for regional perspectives providing insights not readily available in global- or country-level analyses is convincing, and the authors identify several features helpful in describing and studying regions comparatively. The case studies are generally insightful, and provide a nicely structured historical analysis by placing individual areas within a comparative framework. However, the book would have benefited from more-explicit hypotheses regarding when RSCs are likely to evolve in particular ways. Although the authors' willingness to make predictions about the future is admirable, by offering several possible scenarios they also, to some extent, guard themselves against making more-specific falsifiable propositions. The authors do not do full justice to large-N studies of regions, rivalry, and peace (which are rather unfairly dismissed for only "applying the theory to one or a few case studies" [p. 78]), and many will disagree with elements of their analytical framework. I, for one, am not persuaded that regions are best considered inherently separate clusters or that important external actors ought not be considered part of an RSC solely because they could chose to withdraw from it. Indeed, many small states have sought isolationist strategies as a response to regional security concerns. These reservations aside, this is a book that deserves to be widely read, and it is likely to serve as an inspiration for many subsequent studies of regions.

KRISTIAN SKREDE GLEDITSCH
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At War's End: Building Peace after Civil Conflict *by Roland Paris. New York, Cambridge University Press, 2004. 302 pp. Cloth, $65.00; paper, $24.00.*

The problem of how to consolidate peace after the end of communal war plagues many states worldwide. In most cases, the support of international organizations and bilateral donors can make the difference between stability, democratization, and economic development on the one hand and relapse into war on the other.

How has the international community responded to this challenge? According to Roland Paris, in his well-researched book, the record is mixed. International organizations have adopted a peacebuilding strategy of quick liberalization of economic and political life, that is, rapid democratization and marketization. Regular elections, the protection of civil liberties, and the establishment of market-oriented economics have been promoted as the desirable goals for war-shattered states.

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Paris's main criticism of peacebuilding operations is not about the goals pursed but rather about the means adopted. As Paris shows, through detailed analysis of the entire universe of post-Cold War cases, in the short term, political and economic liberalization exacerbate conflict instead of resolving it. Unsurprisingly, only two missions have been clear successes (Namibia and Croatia). Two more were failures (Angola and Rwanda). All others (Cambodia, Liberia, Bosnia, Nicaragua, El Salvador, Guatemala, and Mozambique) lie somewhere in between these two extremes, generally inclining more toward failure than success. Paris concludes that liberalization "either contributed to a rekindling of violence or helped recreate the historic sources of violence in many of the countries that have hosted these missions" (p. 155).

Liberalization is destabilizing, he argues, because war-shattered states possess neither the institutional capacity to deal with intense political and economic competition nor a tradition of peaceful conflict resolution. Even more worryingly, where institutions do exist, they are little more than instruments in the hands of one faction, which can use them to oppress another. From this analysis, Paris draws a logical and judicious conclusion: institutionalization should precede liberalization. Instead of rushing into elections and the sale of state assets, peacebuilders should get more involved in the domestic affairs of war-shattered states, limit political and economic freedoms in the short term, while creating better foundations for peace and democracy in the long term.

All of this sounds reasonable enough. So, one might ask, why do international organizations continue to push for immediate political and economic liberalization? Why have they not adopted Paris's thoughtful advice? Unfortunately, Paris raises this question but avoids answering it (p. 210). This is perhaps unfortunate, inasmuch as consideration of the peacebuilders' motivations and goals probably would have enriched the analysis. Instead, Paris simply takes peacebuilders' stated goals at face value. He argues that the standard by which to judge peacebuilding operations is the United Nations's official view that these operations should establish the conditions for stable and lasting peace "likely to endure beyond the departure of the peacebuilders themselves" (p. 59). There is no reason to doubt the sincerity of UN officials. There are plenty of reasons, however, to suggest that major Western states (which finance, support, and often direct peacebuilding operations) are at least as much interested in promoting "stable and lasting peace" as they are in preventing further destabilizing conflicts and their spillover effects. Consequently, peacebuilding operations are as likely to promote the interests of war-shattered states as they are to promote those of intervening states and organizations. While Paris's better appreciation of peacebuilders' motivations would have probably improved his book, he has nonetheless written the best analysis to date of one of the most important aspects of contemporary international politics. Paris's excellent work will quickly become the most authoritative source on this topic.

ROBERTO BELLONI
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Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law *by Anne Orford. New York, Cambridge University Press, 2003. 246 pp. $75.00.*

If the best test of the significance of a book is whether it makes you rethink a familiar topic, then this study of humanitarian intervention passes with flying colors. Dealing with themes that have been a magnet for an array of pieties by moralists and legalists in recent years, Anne Orford challenges conventional wisdom in a provocative and persuasive manner. She brings an intelligent and informed skepticism to claims by governments and international institutions that their use of force in the pursuit of humane ends is beneficial for the peoples that are supposedly being protected from adversity.

In brief, without doing justice to the texture of argument and evidence, the argument is that the discourse and practice of humanitarian intervention is designed to achieve a variety of unacknowledged results: to give the intervening actors an aura of moral superiority that is inconsistent with their historical and current roles; to disguise the concealed strategic motives associated with achieving post-interventionary control over a target society; and to impose a neo-liberal approach to economic development that generates a new cycle of suffering for most of the peoples supposedly being helped. Orford brilliantly demonstrates, in the 'genocidal' settings of the Balkans and sub-Saharan Africa of the 1990s, the insinuation of neo-liberal policies pushed by the International Monetary Fund, the World Bank, and behind them, Western governments, with the effect of insisting upon often-inappropriate, investor-friendly, draconian fiscal policies.

Orford shows that beyond these economistic motivations, there is also present a psycho-political agenda enabling former colonial exploiters and geo-political hegemons to recast themselves as heroic saviors of vulnerable third-world countries, while, in fact, persisting in efforts to dominate and exploit. An aspect of this 'writing' of humanitarian intervention is to ignore the historical record, and deny the causal connections between the abuses of the past and the tragedies of the present, attributing the current crises to the deficiencies of the indigenous culture, and providing a convenient rationalization for self-serving presentations of the intervenors as rescuing third-world peoples from their own barbarism.

Orford's presentation, although nuanced, is one-sided. As such, it provides a needed antidote to such influential advocates of interventionary diplomacy as Niall Fergusson or Michael Ignatieff, who are uncritical about the humanitarian credentials of the intervenors.

It is not only the rationale and effects of humanitarian intervention that are caught in the crosshairs of Orford's critical eye. She also points to the reliance on high-altitude bombing and the use of cruel weaponry to shift the main burden of casualties from intervening military forces to civilian populations. She also asks the question "saved for what?" And her harsh answer is saved for a superimposed experience of capitalist exploitation, which she contends represents a fundamental denial of the right of self-determination.

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I am not sure whether this is the best book ever written on humanitarian intervention, but it is certainly the most provocative and original. It deserves the widest possible reading, and is a fine complement to the more conventional, yet excellent, book by Nicholas Wheeler on the same topic, entitled *Saving Strangers.* In academic approach, *Reading Humanitarian Intervention* is closer in spirit and method to the work of Edward Said, Michel Foucault, and Gayatri Spivak than it is to that of her brethren in international law and international relations, with the partial exception of the international jurist, David Kennedy.

RICHARD FALK
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The Paradox of Peace: Leaders, Decisions, and Conflict Resolution *by John D. Orme. New York, Palgrave, 2004. 208 pp. Cloth, $75.00; paper, $24.95.*

Scholars of international relations have spent far more time and energy identifying the causes of war than they have studying the causes of peace. In theory, the two concerns should logically dovetail into one another: a valid explanation for war should also explain peace. In practice, however, the field of international relations has generated few studies (and fewer noteworthy ones) specifically devoted to the question: why does peace break out or fail to do so? This is especially odd because we know that some enduring rivalries among states have ended through peaceful means rather than violence. What can we learn from these cases? John Orme asks and answers this question by investigating nine cases of international rivalries (six successful settlements, three failures) deliberately chosen for the diversity of their actors and settings, e.g., strong and weak powers, occidental and oriental states, contemporary and historical, bilateral and multilateral.

Studies of war and peace typically fall into two errant categories: those that privilege either irresistible historical forces or the skill and genius of negotiators. Most leaders, however, are neither corks bobbing on the restless sea nor actors entirely unimpeded by fixed circumstances beyond their control. Recognizing this reality, Orme wisely focuses on the interplay of *fortuna* and *virtù*, that is, the great forces of history and the virtuosity of leaders in overcoming those forces (or, in social science jargon, structural constraints and incentives). Consequently, Orme's story is not merely one of constraint over choice or choice over constraint, but rather choice within constraint. Given this more analytically balanced agent-structure framework, Orme's detailed empirical research (which comprises most of the book) is able to generate insights about not only the structural factors that help or hinder the pursuit of peace but also the general effectiveness of various diplomatic strategies and their appropriateness under specific conditions.

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Orme cites four central factors that explain why conflicts persist or end. First, when a state's commitments exceed its power assets, it risks insolvency, and its leaders must make hard choices about whether to continue old conflicts. In Orme's words: "Necessity becomes the mother of conciliation" (p. 2). Second, conflicts may continue because the nature of the issue, especially the degree to which the stakes are divisible, makes agreements difficult to reach, regardless of the negotiating strategies that are attempted. Third, conflict tends to endure when bellicose factions are relatively stronger than pacific ones in each country's domestic politics. Along these lines, dovish leaders that seek peace and compromise risk their political survival as bellicose domestic groups loudly proclaim any concession a betrayal. Conversely, because hawks are more trusted than doves with respect to issues of national security and prestige, leaders with bellicose reputations can make costly conciliatory gestures and still sustain a domestic consensus (including the right) for peace. Peace will also be unachievable when the state is governed by either charismatic leaders, whose rule rests on heroic confrontation, or shaky rulers of unstable polities, who often seek to bolster internal unity and support for their regimes by waging diversionary wars abroad.

Finally and most important to Orme's argument, peace will be unattainable when statesmen decide to wait rather than talk or fight. Orme calls this tactic of delay "Micawberism," after the Charles Dickens character, Wilkins Micawber, who, in *David Copperfield*, persists in the belief that fortune will favor him in some foreseen or unforeseen manner. Under the optimistic spell of Micawberism, leaders put off making peace today because they are convinced that tomorrow (whenever that arrives), their state's relative strength will have increased to the point where maximum demands can be exacted of the adversary. The Micawberist proclivity to delay is reinforced by ambiguity and unpredictability, which allow leaders to continue to look forward to a day when something good will turn up.

To combat this misplaced optimism, which is often the greatest enemy of peace, Orme advises a strategy of conciliation from strength, wherein the threat posed by the adversary is ratcheted up rather than reduced. Here, the sequencing of carrots and sticks is important. Unlike the familiar "tit-for-tat" strategy, where the player cooperates first and then reciprocates by repeating the last move of the adversary (either cooperation or defection), conciliation from strength requires the player seeking peace to start with the threat or actual use of force to punish the other side for its delaying tactics and to get it to instead offer costly concessions. The deliberate creation of a very dangerous situation breaks the spell of Micawberism, making it difficult for even the most intransigent, "do nothing" leader to perceive gains from sustained conflict. As Orme puts it, "In many instances demonstrations of strength offer the best and perhaps only hope of breaking a diplomatic deadlock and opening the path to peace. . . . Pessimism, not trust or goodwill, is the most important precondition for success in diplomacy and nothing is more effective in creating it

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than a credible threat of force" (pp. 9, 12). This, then, is the paradox of peace: the threat of war, or war itself, is often required to start the process of peace through compromise.

For many reasons, this is truly a wonderful book. It is not only compellingly argued but beautifully written in a style that is elegant, engaging, blessedly concise, and accessible to students and the general public. The book's key "take home" point is that pessimism about a country's future prospects is not the greatest enemy of peace, as the conventional wisdom would have us believe, but rather its greatest friend. *The Paradox of Peace* should be recommended reading for anyone with a genuine interest or stake in the practice of conflict resolution or in the academic fields of international relations, peace studies, or peace education.

RANDALL L. SCHWELLER
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Getting It Done: Postagreement Negotiation and International Regimes
edited by Bertram I. Spector and I. William Zartman. Washington, DC, United States Institute of Peace Press, 2003. 312 pp. Cloth, $39.95; paper, $17.50.

International regimes are an attempt to address creatively the dynamism of the international system. As such, they are perceived by many authors as real but as yet, are not fully defined. The incongruence of the term when applied to national and international spheres is also known (so much so that in its more widespread use, the term often connotes a certain authoritarianism). Yet, even if not clearly defined, the notion of international regimes makes sense and has a lot to offer (significantly, the literature on the subject is growing: see also the recent and good *National Governance and the Global Climate Change Regime* by Dana Fisher.) A deepening of the debate emerges now with William Zartman and Bertram Spector's effort to explore the link between international regimes and negotiations. The focus of the volume is on post-agreement, and the claim in the book is that little attention has been paid to the crucial question of how regimes sustain themselves and evolve. Therefore, the book offers a very good and illuminating (at times sharp) introductory chapter by Zartman, who very clearly elaborates "six analytical propositions"(pp. 14, 15) to capture the dynamism of regimes. Also, the chapter offers an intriguing framework for the work ahead.

Yet, a few questions linger: what additional clarity does the focus on post-agreement negotiation bring to our overall understanding of international regimes and the negotiations that foster them? Shouldn't we ask what the role of negotiation is in understanding what regimes are and how they function? I am not convinced that *Getting it Done* fully helps us to answer these broader questions. For example, are not all regimes the fruit and product of negotiation

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in the first place? If regimes are dynamic, if not from negotiation, from where does that dynamism come? To further the understanding that Zartman and his colleagues have outlined here, we should probably pay greater attention to how different negotiation styles and strategies contribute to particular outcomes and how they more broadly affect international regime formation and sustainability.

In the book, the case studies are well developed, in particular the chapter by Janie Leatherman. Yet, the gist of the overall argument of the broader volume that indeed negotiation makes a difference in the post-agreement phase of international regimes seems either obvious (regimes are by default a product of protracted and recursive negotiations) or not developed. This book, with its advances, will be especially valuable for students of international conflict resolution because it argues correctly that regimes are relevant, are different in their natures, are emerging, dynamic, and ever-changing, and therefore always the subject and object of negotiations. Nonetheless, the book does not fully advance our understanding of the types of negotiations that regimes presuppose, imply, facilitate, and make possible. For example, sufficient attention is not given to the simple observation that regimes—as concerted sustained efforts to address a common issue cooperatively—suppose no use of violence or threat of it among the participants.

This observation is crucial to addressing the fundamental tautological trap of the negotiation argument, that is to say, that states allow regimes to emerge as they serve their own interests and are willing to negotiate because they rightly perceive that their interests are better served by a sustained recursive use of negotiation, namely: regimes emerge out of negotiation because they are the product of negotiations. Because of this fundamental orientation, as with any recurrent collective human effort, states learn that there is no need to reinvent the wheel all the time. Rather, knowing that a certain path of communication—namely negotiations—can produce acceptable results for them, they pursue it. Hopefully, Zartman and Spector's book will spark new inquiry into this intriguing area and help further our understanding of how recurrence itself might "change" negotiation. In other words, how does the existence of what Zartman terms "a negotiated formula" (p. 7) of a regime change a state's calculation of its own interests? Moreover, in what ways might a fundamental "lack of violent threat" shape the possibility of a regime's evolution that would be otherwise impeded by the pending possibility of violence? The book very convincingly makes the point that regimes change over time and that this change is managed properly through negotiations. It is certainly convincing to argue that no system, such as those supposed by international regimes, could survive if it did not maintain an intrinsic ability to handle change. Zartman and Spector's book represents an important invitation to delve even deeper.

ANDREA BARTOLI
Columbia University

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You, the People: The United Nations, Transitional Administration, and State-Building *by Simon Chesterman. New York, Oxford University Press, 2004. 280 pp. $95.00.*

Peace Time: Cease-Fire Agreements and the Durability of Peace *by Virginia Page Fortna. Princeton, NJ, Princeton University Press, 2004. 243 pp. Cloth, $55.00; paper, $18.95.*

These books by two impressive young scholars on opposite ends of Manhattan (New York University and Columbia, respectively) at first seem to have little in common. They concern different issues, use different methods, and cite different literatures. But they both focus on the possible actions of third parties in attempting to help resolve the major security problems of our time, and, using multiple methods, both substantially advance our knowledge in these areas.

Simon Chesterman has written a pathbreaking book about the varied experiences of the United Nations in state building. Its organization is one of its many strengths. The introduction focuses on precedents in the League of Nations, the Allied occupation of Germany, and decolonization. Building on his expertise in international law, he stresses the legal foundations of these events as well as the political realities that shaped them.

But the bulk of the book is devoted to an analysis of the thirteen cases: Congo, West New Guinea, Namibia, Western Sahara, Cambodia, Somalia, Bosnia, Eastern Slavonia, Kosovo, East Timor, Sierra Leone, Afghanistan, and Iraq.

Instead of a separate chapter for each, Chesterman first organizes them in terms of the tasks which the UN attempted to fulfill: decolonization, peaceful transfer to an existing government, administration to hold elections, administration with no end state, and responsibility for basic law and order. This allows him to compare cases that are, in fact, comparable, as well as trace the shifting patterns of mandates over time and give us the essential facts for each case. The remaining chapters draw on the cases but focus on common, important functions: peace and security, building democracy, transitional justice, humanitarian and development assistance, and elections and exit strategies. Throughout, he uses a combination of legal analysis and in-depth political reporting (both in the countries and in the United Nations itself).

Many of his conclusions are not surprising: The United Nations has been handicapped by inadequate resources, political divisions, overly ambitious mandates, and organizational problems. Under the circumstances, it is perhaps surprising that there are some successes, usually the less ambitious efforts, along with some resounding failures. It has not been successful using military force. Quick elections are not a good exit strategy.

His more fine-grained analysis is consistently more interesting. He notes that the UN never developed a doctrine of civil administration, despite its multiple experiences. Although committed to bringing democracy to countries, it has been unable to make itself accountable to the local populations. Internal politics have hindered the recruitment of qualified personnel in the field (in

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East Timor, it was hard to hire people who spoke Portugese!). Transitional justice is not necessary for democracy, and amnesty may be appropriate, but establishment of a working justice system needs to be an immediate priority (and is not). Humanitarian and development assistance often conflict, sometimes have negative impacts on the target country, and often end too soon. "State-building after a war will always take years, perhaps decades, and it is disingenuous to suggest otherwise to domestic publics" (p. 235).

Unfortunately, the high cost of this volume may substantially hinder its dissemination.

Virginia Fortna tackles another interesting problem—why do some peace agreements after inter-state wars last whereas others do not and, in particular, what is the role of cease-fire agreements in this process? Her analysis focuses on the forty-eight agreements in twenty-five wars between 1946 and 1997. She asks what conditions make agreements more or less likely to last, when are cease-fire agreements more likely to be employed, on balance do they make peace more or less likely, and what specific provisions, if any, are associated with peace? As with the best of recent academic analyses, she uses several different but complementary methods: conventional quantitative analysis (using her own database), a less systematic examination of patterns of all the cases, and in-depth case analysis of the Israeli–Syrian and Indian–Pakistani cases (both of which have numerous violent conflicts and cease-fire agreements, allowing comparison within as well as between them). Her crystal clear presentation of both methods and results makes this an admirable illustration of how to do research for undergraduate and graduate courses.

The problem is framed as preserving peace when the belligerents have fought one another and continue to disagree over the political issues that triggered the war in the first place. She concludes that decisive military victory, high costs of war, lack of prior conflict between the belligerents, lack of threat to the existence of one of the states, and lack of contiguous borders all make renewed war significantly less likely, both in quantitative and case analysis. Equally interesting, "relative power, the number of states in the war, whether the conflict is over territory, measures of states' 'expected utility' for war, and changes in regime type . . . are less helpful for understanding whether peace will last" (p. 9). Belligerents resort to cease-fire agreements in situations in which war seems likely to break out again, and these agreements seem to significantly reduce the likelihood of this occurring (the analysis of the Israeli–Syrian case is particularly striking). She then disaggregates the agreements and finds that demilitarized zones, explicit guarantees and peacekeeping by outsiders, and joint commissions to help resolve issues are all associated with peace, whereas arms control agreements, controls over groups that oppose the cease-fire, troop withdrawals, and third-party mediation are not. On the controversial issue of peacekeeping by outsiders, she finds that it can be very helpful but that if it fails, reestablishing it tends to be futile.

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On balance, then, these are two very impressive, albeit very different, books. Their combination of systematic analysis, in-depth research and knowledge, and focus on both theoretical and policy issues make them models worthy of admiration and emulation.

ROY LICKLIDER
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Understanding Peacekeeping *by Alex J. Bellamy, Paul Williams, and Stuart Griffin. Oxford, UK, Polity Press, 2004. 344 pp. Cloth, $64.95; paper, $29.95.*

Peacekeeping has become an increasingly difficult concept to define. Even in its earliest "classic" form it had varied shapes, molded to fit the disparate crises that warranted the services of peacekeepers. As conflict became predominantly internal in the 1990s and humanitarian crises threatened international security, a more robust form of peacekeeping, which Secretary-General Boutros Boutros-Ghali termed "peace enforcement," was introduced, not to repel aggression but to enforce ceasefires, ensure access for humanitarian deliveries, and safeguard civilian populations caught in the midst of battle. Peacekeeping became more complex, entailing humanitarian and governance functions as well as security. The authors of *Understanding Peacekeeping* trace this history and analyze systematically the historical catalysts that have brought these changes.

The authors focus on three themes. The first is the ongoing debate about what role peacekeeping ought to play in global politics. The authors identify the two main positions in the debate as "Westphalian" and "post-Westphalian." They define the former as the belief that the primary role of peacekeeping is to facilitate "liberal international relations" whereby states resolve their differences through open diplomacy. The post-Westphalian is defined as the concept that violent conflict is related to illiberal governance. Peacekeeping should, therefore, promote a world of "liberal polities" as the basis for stable peace.

The second theme pursued in the book is the gap between the theory and practice of peacekeeping. The third is the proliferation of peacekeeping actors, both the parties in conflict and the varied elements included in a peacekeeping operation. The treatment of the second and third themes is straightforward and helpful, although some of the descriptions of the peacekeeping operations that are cited as examples are so summary as to be occasionally less than accurate. It is mainly in pursuit of the first theme that the authors run into trouble. The variation in the forms that peacekeeping operations have taken has resulted in a growth industry in terminology. The result is confusion that has political ramifications because contributing states rightly insist on knowing precisely which kind of peacekeeping is involved before they provide troops. The terms "Westphalian" and "post-Westphalian" are too broad to be helpful in this regard and so widely encompassing as to be misleading. Traditional or

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classical peacekeeping is accurately described as the deployment of peacekeepers into a conflict situation to provide a space in which a peaceful relationship among the parties in conflict can be restored. This usually has been between states, as the term Westphalian would suggest, but by no means always. Few, if any, traditional peacekeeping operations have been deployed to facilitate a liberal international polity.

Dag Hammarskjold identified the traditional form of peacekeeping that he developed at the time of the Suez War in 1956 as a *provisional measure* as defined in Article 41 of the UN Charter, which means an action implemented without prejudice to the rights, claims, or position of the parties concerned. Secretary-General Boutros Boutros-Ghali also identified the more robust form of peacekeeping that he called "peace enforcement" as a provisional measure. This identity as a provisional measure is the clearest distinction that can be made between peacekeeping in all its forms and enforcement action taken (or authorized) by the Security Council against an aggressor under articles 42 and 43 of the Charter, as happened when Iraq invaded Kuwait. This distinction does not emerge clearly from the terminology used in *Understanding Peacekeeping*.

Notwithstanding such presentational problems, *Understanding Peacekeeping* is a valuable book. The authors have made an especially useful contribution in making understandable the extent and complexity of UN peacekeeping operations of all types in today's global environment and in explaining just why these operations have sometimes succeeded and almost as often failed.

JAMES S. SUTTERLIN
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Power and Purpose: U.S. Policy Toward Russia After the Cold War *by James M. Goldgeier and Michael McFaul. Washington, DC, Brookings Institution Press, 2003. 450 pp. Paper, $19.95.*

This book gives the reader more than its title indicates. Its authors trace U.S. policy in conjunction with both Russian foreign policy and changes in Russian democratization, human rights issues, and economic development from the late 1980s into 2003. Their focus is on U.S. policy toward the USSR and Russia after the Cold War, particularly during the presidencies of Boris Yeltsin and Vladimir Putin. James Goldgeier and Michael McFaul have made use of their contacts to interview many of the actors involved.

Their theme is that ideas count, that "the worldviews of key decision-makers play a central role in the making of American foreign policy" (p. 333). Ideas change with administrations and contest each other within administrations. In U.S.–Russian relations, the ideas and actions of the United States under George H.W. Bush featured a "prudent realism" (p. 9) (felicitous term!), foregoing attempts at influencing democratization in Russia, favoring the status quo of a power balance.

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The idealistic efforts of the Clinton administration involved assisting regime transformation and promoting democratization and economic reform. Its idea of mission can be traced back to the vision of America as a "city on the hill" that we hear so much about these days. But as this detailed account makes clear, the complexities of the U.S.–Russian relationship have prompted the tempering of idealism with realism in setting policy priorities, and have tested the reliability of reformist assumptions.

Ideas may carry particular weight at times of rapid change. But perceptions of change in Russia may overestimate possibilities for reform, as this account reminds us. U.S. perceptions lagged behind in regard to such changes as the diminution of Russia's power. The administrations of both George H.W. Bush and Bill Clinton (during its early years) overestimated the military power of Russia. Perhaps not without long-term benefit, one should say, this spurred efforts to incorporate Russia into a framework of cooperation with the West, such as befitted and might mollify a great power. Tensions had arisen in relations with Russia over NATO's eastward expansion and over U.S. opposition and military response to Serbia's genocidal policies against Kosovar Albanians. The deal with Russia included its membership in the oversight "quartet" of the EU, UN, United States, and Russia. The United States helped to arrange a special relationship with NATO and in 1998, Russia's entry into the G-7 group of leading economic powers.

Such concessions to Russia seem to have carried no serious cost. But in trying to support Russia's departure from the Communist legacy of state economic centralism, the U.S. administration overestimated Russia's receptivity to economic reform of the shock therapy variety. In fact, the book might have dug even deeper—were it a study primarily of internal politics—into whether there was some validity to the objections of the parliamentary opposition to Yeltsin-supported shock therapy in 1992–1993. Support for "loans for shares" privatization in 1995–1996 induced the emerging oligarchs to support the reelection of Yeltsin, purported champion of democracy, in 1996.

Shares securing bank loans gave bank owners—the oligarchic new billionaires—access to Russia's economic (and, for a time, political) commanding heights. From there they could look down in relative safety on the financial collapse that wiped out the savings of millions of less fortunate compatriots. And, as the book points out, at least U.S. robber barons created new wealth, whereas the Russian oligarchs were then merely grabbing existing assets. One might add that after seven decades of Communism, and with an all but demolished private sector and semblances of legality, Russia had little or none of the "fire in the ashes" that Theodore White discerned in Western Europe after World War II.

The attacks of September 11 brought a new level of cordiality into relations with Russia. Yet the Bush administration's worldview injected new strains and ironies into relations with Russia. That happened when President George W. Bush's vision of a crusade against evil sent U.S. and allied forces to invade

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Iraq. But no Cold War split of East and West resulted here. Yeltsin's successor, President Vladimir Putin, aligned himself with France, Germany, and other parts of "old Europe" against the U.S. invasion, in the name of adherence to international law, the UN charter, and Security Council resolutions. The Russians pointed to the absence of convincing grounds for invading Iraq, and to double standards for pushing democracy in Iraq and Iran but not in Egypt or Saudi Arabia. Foreign Minister Igor Ivanov added to his extensive criticism of the U.S. invasion of Iraq "serious doubts about a democracy imposed by Tomahawks"(p. 328).

For all their differences by early 2003, including Russian military sales to Iraq, Putin and Bush maintained a certain cordiality, while U.S. reservations about Russian attempts at reform and concern over the ongoing horrors of war in Chechnya faded from top priority "once the war was over" (p. 329). But how quickly things changed after the writing of this book. The war in Iraq only seemed to be over. Also, I must question the notion that Bush was simply promoting "Wilsonian ideals"— in either principle or practice. The National Security Strategy document of 2002 briefly cited in the book (p. 14) departs from Wilsonian idealism in principle (in its emphasis on the U.S. ability and willingness to go it alone, if necessary) and in practice, by bypassing intergovernmental institutions.

Considerable detail supports the finding that for all its power, the United States has turned out to be either unwilling, or when willing, unable to significantly influence domestic change in Russia. But as an observer of Russia on and off since the 1950s, I suggest keeping in mind for the future the long-term influence of diffuse and persistent nongovernmental contacts related to cultural exchanges, human rights, and religious revival.

PETER JUVILER
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Human Rights: Between Idealism and Realism *by Christian Tomuschat. New York, Oxford University Press, 2003. 370 pp. Cloth, $72.00; paper, $39.95.*

This book is based on a series of lectures that Christian Tomuschat delivered two years ago at the Academy of European Law of the European University Institute. The author, who is a professor of constitutional and international law at Humboldt University and has written extensively on human rights issues, focuses primarily on procedures and mechanisms of implementation. There is very little discussion of the conceptual debates concerning the origins and nature of human rights or of the relationship between human rights and democracy that have so dominated recent scholarship in the field. Rather, as the author states at the beginning, it is focused "particularly [on] the mechanisms designed

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to translate human rights as legal propositions into a living reality which will capture our attention" (p. 5).

In this context, the author proceeds with a rather extensive examination of international and regional institutions and mechanisms for the promotion and protection of human rights. In particular, he analyzes and briefly assesses the monitoring role of charter-based organs (e.g., the General Assembly, Security Council, and Human Rights Commission), as well as the functions and record of international and regional treaty-based bodies. He is particularly informative in discussing the work of UN treaty-based and European expert bodies; for example, over the last twenty years or so, the Human Rights Committee (HRCee) has produced some very important decisions, and its case law deserves more attention than it usually receives in human rights treatises. Thus, the author is absolutely correct in noting that "at the universal level the balance sheet of the HRCee is the most impressive one" (p. 185). On the other hand, the Inter-American and African Commissions receive much less attention. This emphasis on UN and European mechanisms is even more pronounced in the chapter on International Tribunals, where the evolving jurisprudence of the Inter-American Court of Human Rights receives little coverage (barely three pages).

One of the book's strengths lies in its attention to international humanitarian law (IHL), the law governing situations of armed conflict. Although international human rights law and IHL share a fundamental commitment to human welfare, traditionally they have been perceived as separate bodies of law. In recent years, however, there has been a growing convergence between these two bodies of law, a convergence manifested in resolutions adopted by UN organs (especially by the Security Council), the jurisprudence of the ad hoc International Tribunals for the Former Yugoslavia and Rwanda, as well as the case law of regional organs (here the Inter-American Commission on Human Rights has clearly been the leader). As a result, on the normative plane at least, state-centric notions of reciprocity are giving way to the protective needs of individuals and populations. In this vein, the book could have devoted more space to key aspects of this growing convergence, as well as to the concomitant efforts to address lacunae in the legal regime of protection. For example, although there is a reference to the Declaration on Minimum Humanitarian Standards, this initiative has since been renamed Fundamental Standards of Humanity and several reports have been issued under its auspices by the Office of the Secretary-General in collaboration with the International Committee of the Red Cross (ICRC). Has there been any progress? Moreover, in filling in the lacunae in the legal regime of internal armed conflict, no reference is made to the ICRC's long-awaited study on customary rules of IHL.

Last but not least, a brief comment on the state centrism of the human rights discourse is necessary. Although the state remains the key actor, the abusive conduct of non-state entities is increasingly attracting legal attention: multinational corporations, transnational criminal networks, armed groups, and socially and culturally sanctioned forms of violence in everyday life. Although

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aspects of this issue are addressed under different headings, the subject deserves a more systematic treatment in a human rights volume.

Overall, this is a good book. It is well organized and clearly written, and includes a wealth of important information (and citations). It will be particularly helpful for courses that want to place emphasis on human rights practice. It is also a healthy reminder of the fact that, despite the many setbacks, the human rights discourse is here to stay.

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European Security After 9/11 *edited by Peter Shearman and Matthew Sussex. Brookfield, VT, Ashgate Publishing Co., 2004. 176 pp. $79.95.*

This is an edited volume of seven papers on the subject of European security after the terrorist attacks of September 11. The first two chapters are a synthesis of the prevalent theoretical explanations of international relations in the post-Cold War world and, more specifically, post-September 11 world. The third chapter, co-written by the editors, analyzes the reasons for and dynamics of the growing divergence between Europe and the United States on security issues. Finally, the last four chapters are case studies of the security issues facing the four main powers influencing European politics: France, Germany, Russia, and the UK.

The book argues, generally, that there have been structural changes in international relations, and that these are leading to a political and strategic divergence between the United States and Europe. The structural change can be summarized as a combination of U.S. unilateralism and the different strategic interests of the two parties. The attacks of September 11 and the ensuing wars in Afghanistan and Iraq have merely exacerbated the growing differences between the European and American views of the world and of their roles in it.

The strength of the book is in the case studies of the four main powers in Europe: France, Germany, the UK, and Russia (the last, even though not a member of the European Union or NATO, is a crucial actor in the realm of security in Europe). These four chapters, written by different authors who are experts on their respective subjects, trace the changes in the foreign and security policies of the four powers, going back to the Cold War or at least to the early 1990s (in the case of Russia). Two points emerge from these cases. First, over the past several decades, these countries have developed their own unique understanding of their role in the world, which is often in sharp contrast to that of the United States. The reason that these differences did not translate into conflicting policies (especially in the cases of France, Germany, and Russia) until now is because of the Cold War. Second, September 11, and the war in Iraq in particular, have served as powerful catalysts for a more dramatic manifestation of these structural differences. These differences are now well

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known: the United States prefers a unilateral course of action, while using NATO and the UN as talking forums. The European powers, on the other hand, favor a multilateral approach and fear that U.S. policies are undermining the security of Europe.

The book has two main shortcomings. First, the claim that there has been a dearth of writing on European security after September 11 is exaggerated. There is a long list of books and articles on the growing split (or lack thereof) between the United States and Europe, on European attempts to forge a common security and foreign policy, on the divisions within Europe concerning the direction of foreign policy, and on the role of Russia within the larger European framework. This book should be placed within this literature. Second, while the analysis of the problem facing Europe in its relations with the United States may be correct, there are few attempts to indicate possible future trends and solutions. The invitation to a more "cosmopolitan" approach (p. 24) in U.S. foreign policy is, as the authors admit, utopian. Moreover, it is simply unclear what such an approach would involve, how (if at all) it differs from multilateralism, and how it would solve the fundamental challenge of this relationship—the underlying differences of interests and principles guiding the foreign policies of these powers.

JAKUB J. GRYGIEL
Johns Hopkins University

The Missing Peace: The Inside Story of the Fight for Middle East Peace
by Dennis Ross. New York, Farrar, Straus & Giroux, 2004. 872 pp. Cloth, $35.00; paper, $18.00.

The Arab–Israeli peace process constituted one of the most dramatic diplomatic episodes of the 1990s. The U.S.-brokered process established the precedent of Arab–Israeli negotiations, achieved an Israeli–Jordanian peace treaty, and affirmed the principle of a two-state solution to the Israeli–Palestinian imbroglio, even as it failed to curb Israeli–Palestinian violence, check political extremism, or achieve Israeli–Syrian or Israeli–Palestinian peace. Dennis Ross, the U.S. chief Middle East envoy, provides a cogent and compelling insider's account of American involvement in the peace process from its origins at Madrid, to countless rounds of shuttle diplomacy in the region, to summits in Washington, Wye River, Shepherdstown, Geneva, Camp David, and elsewhere.

Ross's narrative is laced with cogent evaluations of the major diplomatic episodes. He stresses the importance of the Madrid Conference in breaking the taboo on direct negotiations and of the Oslo Accord in providing a framework for Israeli–Palestinian settlement. He suggests that Israeli Prime Minister Benjamin Netanyahu's repudiation of the Wye River agreement under domestic political pressure undermined a prospective settlement with the Palestinians.

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Ross asserts that Syrian Prime Minister Hafez al-Asad's retractions of the terms his foreign minister offered at Shepherdstown scuttled the prospects of an Israeli–Syrian treaty. The author posits that Israel's withdrawal from Lebanon inadvertently legitimized "the Hizbollah model" of inflicting violence until Israelis "grow weary and withdraw" (p. 626). Ross directs his most pointed criticisms at Palestinian leader Yasser Arafat for rejecting historic opportunities to achieve Palestinian statehood on generous terms in 2000. Clinton was accurate, Ross believes, in calling Arafat "the skunk at the party" (p. 710).

Ross reaches conclusions that his successors (and the Middle East antagonists) would be wise to ponder. The Oslo process was not a complete failure, inasmuch as it legitimized the negotiation process, stabilized international relations, and established the principle of a two-state solution. The process faltered in part because Arab statesmen, who lacked the political legitimacy of elected leaders, refused to take chances, make compromises, or surrender timeworn images as hardliners (Asad) or victims (Arafat). The process also stumbled, Ross believes, because the Israelis refused to base their security on compromise instead of on control of land and borders.

Ross also faults the United States for privileging process over outcome. "Too often we shied away from putting the onus on one side or the other," he writes, "because we feared we would disrupt a process that had great promise" (p. 770). Thus, Israeli and Palestinian leaders hesitated to make concessions and refrained from encouraging their own peoples to shed their mythologies, view the other side with respect, or prepare for the difficult steps toward a true peace.

Ross bolsters his evaluations with massive detail about the positions, statements, and counterarguments of the key figures during each and every round of negotiation. To its credit, this thick description will enlighten readers for years before government records will be declassified (even if it occasionally weighs down the narrative with evidence of inconsequential dead ends and non-starters). In addition, the author provides penetrating sketches of the major players of all states. He also reveals the personal difficulties experienced by U.S. diplomats, such as telephone marathons to contain crises, sleep deprivation during summit meetings, and the logistical challenges of day-to-day diplomacy, such as briefing Clinton while he watched a basketball game on television.

Ross's memoir is far more detailed and analytical than Bill Clinton's *My Life* and Warren Christopher's *Chances of A Lifetime*, whose episodic storytelling seems superficial by comparison. *The Missing Peace* resembles Madeleine Albright's *Madam Secretary*, which masterfully blends assessments of U.S. peacemaking with colorful anecdotes about the conduct of diplomacy at the interpersonal level. Ross deserves a wide audience.

PETER L. HAHN
Ohio State University

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The Democratic Century *by Seymour Martin Lipset and Jason M. Lakin. Norman, University of Oklahoma Press, 2004. 480 pp. $34.95.*

With Jason M. Lakin, Seymour Martin Lipset's book is an auto-*festschrift*, highlighting his many contributions to political science and elaborating upon how they remain relevant today. The book takes as its central inquiry why democracy has generally succeeded in the United States but often failed in Latin America. The book is self-described as "pessoptimistic" that democracy can triumph virtually anywhere over the long term, even if the stars need to be aligned just right to achieve democracy in the short term.

In attempting to answer its query, *The Democratic Century* is divided into three parts. The first delineates a working definition of democracy. Given the authors' ultimate commitment to a multiplicity of explanations (or "correlates") for democracy's durability when it succeeds, their minimalist definition—a society in which all adults may vote in competitive elections for a chief executive and a national legislature—feels unnecessarily simple. Although minimalism is common in positive political science—and is becoming more common in normative work too—it is hard to justify classifying democracies in such a fashion. It surely simplifies the task, but simplification is precisely what the authors try to avoid in explaining democracy's successes and failures.

The first part of the book nevertheless also offers a very nice literature review of executive systems, parties, and civil society. The central thesis of this section is that what the authors call the "Tocquevillian Triad"—parties, civil society, and federalism—is critical for democracy's success (although the authors never really tackle federalism in the book at all, despite adverting to it regularly).

The second part of the book focuses on society rather than on formal political institutions. It argues that both socioeconomic and cultural variables play a role in establishing the probability of democratic success. Here, too, the discussion essentially charts Lipset's varying contributions to the debate between the economists and the culturalists. One chapter explains the positive correlation between democracy and gross domestic product per capita; it also emphasizes why a thriving private sector is good for democracy—so that there are high-income, high-status jobs with which to transition old regime members into comfortable lives. The rest of the second part focuses on less easily quantifiable factors that contribute to healthy democratization, such as gradualism, culture, collective psychology, and perceived legitimacy of the regime. The analysis does not produce radical conclusions, but it supports both the general argument of the book, that democracy's "correlates" are diverse, and the general tone of the book, "pessoptimism."

The final part of the book seeks to apply the insights from the first two parts to address directly why democracy has generally succeeded in the United States, whereas the results of democratization efforts in the Latin American context have been much more mixed; there, authoritarianism and military

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intervention seem all too common. In addition to a discussion of the roles of culture, socioeconomics, values, religion, parties, civil society, and equality of land distribution in explaining democracy's fate in specific Latin American countries, the authors argue that the historical development of democracy in the relevant countries was deeply constrained by the history of Spain, Portugal, and Britain prior to and during their colonization of the Americas, by their incorporation of the colonies, and by the independence wars that formed the new nations in the Americas. The narratives about the many Latin American countries under investigation in this section make interesting reading and provide a helpful background for those who know little about the political development of the countries of Latin America. The thesis is ultimately well supported and the analysis is complex, diverse, and complete.

ETHAN J. LEIB
University of California, Hastings College of the Law

Soft News Goes to War: Public Opinion and American Foreign Policy in the New Media Age *by Matthew A. Baum. Princeton, NJ, Princeton University Press, 2004. 344 pp. $39.95.*

There's a lot to like about Matthew Baum's *Soft News Goes to War*. It's one of the better political communication books of recent years.

Baum starts with a paradox. Opinion polls through 2000 indicated a decline in recent decades in Americans' interest in politics and foreign affairs. Yet, the public's attention to U.S. military action abroad had increased sharply. For example, fully 90 percent of Americans said in 1991 that they were paying "a great deal" or "quite a bit" of attention to the Persian Gulf War—nearly twice the percentage that in 1970 said they were closely following the Vietnam War.

Baum solves the paradox by analyzing television's soft-news programming. As cable television mushroomed in the 1980s and 1990s, a hyper-competitive media market emerged that spawned a host of cable and broadcast soft-news programs such as *Hard Copy* and *A Current Affair*. Unlike regular newscasts, these programs attract an audience that includes many viewers that have only a marginal interest in politics. Further, although these soft-news programs ignore many aspects of public affairs, including routine developments in foreign affairs, they feast on international crises—military conflict in particular. Thus, more Americans than ever before are exposed to high-profile international crises. Soft news brings war to the attention of the otherwise politically inattentive.

Among the consequences that Baum explores is the tendency of Americans during international crises to back their president—the "rally around the flag" effect. Baum shows that the rally effect was more pronounced in the 1980s and 1990s than in the 1950s and 1960s. Presidential approval ratings peaked at

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higher levels in the more recent decades, largely because the politically less attentive citizens were now more likely to be part of the rally effect.

Baum's argument has lessons for scholars and practitioners alike. There's a new media world out there, and it can be ignored only at the risk of faulty inferences. This world is messier—both in its content and in its audience—but it is the new reality.

Baum has a blind spot, however, that weakens this book. In his determination to show the power of soft news, he fails to give due attention to competing (or, almost certainly, complementary) explanations for the public's heightened attention to war. Nowhere in this book is there a serious attempt to address the role of live coverage and of cable news outlets (CNN, Fox, and MSNBC). Cable news gets very short shrift. Baum dismisses it as having a "tiny" audience (p. 179).

Although the audience ratings for cable news are small, these ratings measure only the number of viewers who happen to be watching a program at a given moment. The ratings greatly underestimate the total viewing audience of any channel or program that has high turnover. The average CNN viewer, for example, stays tuned for roughly ten minutes before moving on to other programming or turning off the set. Over the course of twenty-four hours, CNN, Fox, and MSNBC attract a great many discrete viewers, although their combined audience rating at a given moment is roughly only one million. Moreover, the cable news audience increases sharply when a dramatic event occurs—such as the terrorist attacks of September 11, the onset of combat in Iraq, or the explosion of the space shuttle Columbia.

A truly remarkable difference between the Vietnam era and the current era is live coverage of such events. The Persian Gulf conflict was the first large-scale American war televised in real time, and viewers flocked to the coverage. Moreover, they followed the war primarily on cable and broadcast news rather than through soft-news programs.

These reservations aside, this book will open the eyes of scholars and practitioners alike to the new world of public communication. *Soft News Goes to War* is a must read for those interested in the media, public opinion, and foreign policy.

THOMAS E. PATTERSON
Harvard University

Electoral Engineering: Voting Rules and Political Behavior *by Pippa Norris. New York, Cambridge University Press, 2004. 378 pp. Cloth, $70.00; paper, $26.00.*

In *Electoral Engineering*, Pippa Norris takes on a challenging task. Drawing on surveys commissioned by the Comparative Study of Electoral Systems in thirty-two countries conducted within a year after thirty-seven national elections, she attempts to sort out the causal influence of electoral institutions,

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conceptualized within a rational choice framework, and of various sociological and cultural conditions on political behavior and public opinion about democracy. The cases are drawn from all five continents and range from countries that may barely count as democracies (Belarus, Ukraine) all the way to the full set of Organization for Economic Cooperation and Development democracies. In the first several chapters, Norris details her independent variables—electoral institutions and sociocultural endowments—as well as the normative visions that surround the choice among alternative electoral systems. In the seven chapters that follow, she explores the explanatory power of her theoretical rivals.

In the first substantive chapter, she confirms the "mechanical" part of Maurice Duverger's law and Duverger's hypothesis that the effective number of parliamentary parties is lowest in majoritarian electoral systems, but her bivariate analysis does not yet pit the institutional theory against other contenders. In the next chapter, she estimates the extent to which political party choices, arranged on a unidimensional left–right scale, can be accounted for by various socioeconomic and cultural indicators in each country. She employs the total explained variance of each equation as an indicator of cleavage strength. She then hypothesizes that cleavage strength should be greatest in proportional electoral systems, followed by combined systems, and trailed by majoritarian systems. In her bivariate analysis, she finds a weak relationship in the correct direction (coding in proportional electoral systems = 3, combined systems = 2, and majoritarian systems = 1, I compute a correlation of $r = +.16$ [nonsignificant], falling to $r = +.06$ when dropping Iceland), as well as weak to moderately stronger cleavages in postindustrial, as opposed to developing and recent democracies (with a bivariate correlation of roughly +.27). As the author realizes, it is hard to draw causal inferences from these preliminary findings without entering rival explanations as well as controls (age of democracy and electoral system, protection of civil and political liberties) into the same equations as well as considering the potential endogeneity of electoral system choice.

In the third substantive chapter, she probes into the extent to which societal conditions (industrial or postindustrial society) or electoral systems affect the differential strength of partisan identification, net of socioeconomic background, and partisan ideology, across her sample of countries. She finds weak support for the propositions that postindustrial societies and mixed electoral systems boost party identification. Again, these findings amount to little without appropriate controls. The fourth chapter, on voter turnout, finds confirmation of both rational-institutional and cultural determinants of citizens' conduct, but, once more, it is hard to fathom how one would assess the net empirical power of each theoretical argument. Only in the fifth substantive chapter, based on a sample of 171 countries, does Norris engage in a multivariate analysis, this time examining the proportion of women in parliament. She finds overwhelming support for the electoral system hypothesis, as opposed to a human development index and a series of dummies for the prevalent religion in a country (p. 186). But her regression does not include age and democratic quality of political re-

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gime, or interaction effects between religious and institutional variables. This would be particularly important, given her later finding (p. 207) that the electoral system effect is just about entirely confined to protestant countries.

The sixth substantive chapter probes into implications of Arend Lijphart's theory of consociationalism and postulates that in Lijphart's framework, ethnocultural minorities should signal greater support for democracy, measured by a variety of indicators (perception of electoral fairness, democratic satisfaction, political efficacy, and voter turnout) under proportional than majoritarian electoral rules. She cannot establish this relationship, but then quite correctly details in her chapter conclusions why, for a variety of reasons, her model may be too simplistic to provide a fair test of Lijphart's consociationalism theory (pp. 226–228). Only in her final substantive chapter does Norris establish pretty robust findings that a personal linkage between electoral constituencies and candidates for or members of legislatures depends on, among other things, the electoral ballot structure. Her multivariate analysis reveals, however, that this net effect is substantively marginal (pp. 242–243).

I should emphasize again that Norris confronts a difficult subject. There are few studies that have ventured to test institutional hypotheses with individual-level survey data. Overall, even though her findings are only moderately encouraging, I heartily commend her for her effort. But the book could have done substantially better by proceeding to more-sophisticated multivariate analysis of the rival arguments.

HERBERT KITSCHELT
Duke University

The Politics of Child Support in America *by Jocelyn Elise Crowley. New York, Cambridge University Press, 2003. 232 pp. Cloth, $65.00; paper, $23.00.*

The new breed of studies of dynamics within a single policy arena requires skills that a previous generation of students of the policy process would have found unimaginable. Not only do policy process scholars need to have intimate familiarity with the ins and outs of their subject of inquiry, but they also must be able to place the study within a serious framework and to use both qualitative and quantitative methods to trace patterns of change across long periods of time.

Jocelyn Crowley's study of child support exhibits all of these characteristics. It is an exemplar of how to do this kind of work. Fundamental to the study is the idea of "entrepreneurial episodes"—events that occur when policy entrepreneurs "break out" of the existing policy system and forge a change. Crowley builds her study around two basic theoretical notions. The first is the occasional outbreak of destabilizing episodes that alter the underlying understandings of the issue, thereby altering the balance of forces and producing new "structure-

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induced equilibria"—new systems reinforced by bureaucratic agencies, and standard operating procedures that define the new prevailing policy image operationally. A corollary to the disruptive episodes is the introduction of "risk reduction" strategies that act to make change more likely and (less developed by Crowley) subsequently to consolidate the new equilibrium. The second theoretical notion is the idea that policy entrepreneurs are "rent seekers," exploiting inefficiencies in the economy to gain ends that would not occur under an economy operating under full information.

After laying out the direction of the work in chapter 1, Crowley examines the development of the current system of child support at the national level by centering her discussion on major pieces of legislation enacted since 1950. This is an effective device, getting across the basics while at the same time laying out the basic conflicts underlying the issue. Fundamentally, the system is driven by theories about the father—what motivates him to abandon his family, and what incentives will cause him to provide more support.

The next five chapters describe in detail five "challenger entrepreneur" groups and the breakouts from the prevailing system that they have engineered. Beginning with charity workers at the end of the nineteenth century seeking to provide more positive incentives for holding families together, then moving through the emergence of the social work profession in the early part of the twentieth century, then detailing the neo-conservative challenge to the social work establishment after 1960, and finally, studying the emergence of the affected parties—women as policy leaders and fathers' rights groups—late in the process of policy development, Crowley ably develops the theme of challenger entrepreneurs destabilizing the existing system.

In the final chapter, Crowley returns to the general theme of the relationship of entrepreneurship to policy change, noting, most importantly, that the relatively free emergence of policy entrepreneurs in the American political system implies that entrepreneurs cannot stray too far from mainstream thinking. "Because their entrepreneurial activity reflected the core components of debate that Americans expect when it comes to political change, what could have been hostile takeovers instead became methodical transfers of power" (p. 194). The notion that the limits of policy entrepreneurship stem from the very sources of openness that encourage entrepreneurship is an insight well worth pursuing.

Although I applaud this work and find it a major addition to our understanding of policy entrepreneurship, I do not agree with the use of "rent seeking" here. Indeed, I believe that it conflicts with the notions of destabilization of structure-induced equilibria simultaneously pursued here. Rent seeking implies deviations from a perfectly competitive economy, and any rents come from the exploitation of "waste." Because a perfectly competitive economy would generate no welfare payments to the poor and no enforcement mechanisms or positive incentives for fathers, this seems to be a meaningless starting point for a study of public sector entrepreneurship. It is normatively unpersuasive, and it does not really forward the analysis. Indeed, the sections of the chapters dealing

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with entrepreneurship groups as rent seekers are just confusing and distracting. Maybe all of this is "waste," but if it is, then the book lacks a theory of how that wastage is exploited by entrepreneurs. One certainly does not expect "heresthetics" or destabilization through the introduction of new ideas in such a system. My reservations about rent seeking are but a qualifying footnote on a very fine study, but one that deserves some consideration in the new literature on policy entrepreneurship. Very little, if any, public choice literature is of much use here.

The integration of detailed case studies with emerging theories of policy development and change is the next big task for policy process scholars. In the coming years, this integration will allow policy process theorists and policy practitioners to communicate using a common language—the language of entrepreneurship and consolidation, of new destabilizing ideas and structure-induced settlements. The book will, as a consequence, be read with profit by policy process scholars in political science, sociology, and other academic disciplines; and social work professionals and policy advocacy groups—perhaps serving for the latter as a model handbook about how to go about the next round of destabilization.

BRYAN D. JONES
University of Washington

Defining America Through Immigration Policy *by Bill Ong Hing. Philadelphia, PA, Temple University Press, 2004. 336 pp. Cloth, $71.50; paper, $26.95.*

Histories of U.S. immigration policy often emphasize the expansiveness of immigration opportunities to the United States in absolute terms and relative to other nations. Indeed, the numbers of immigrants to the United States—68,923,308 immigrants to permanent residence between 1820 and 2003—bear out the national myth that the United States is a nation of immigrants. Bill Ong Hing's *Defining America Through Immigration Policy*, however, offers a cautious corollary to this myth. Throughout the nation's history, immigration law and policy have also been used to exclude potential immigrants and to deny rights to immigrants who were outside of the then-current understanding of who was or could be American.

Hing carefully traces immigration law and policy, and, more importantly, practice, to demonstrate a continuing pattern of excluding some potential immigrants. The excluded have changed at various points in American history, but Hing pays particular attention to Asians, homosexuals, and, in the contemporary era, Mexicans and other Latin Americans. The advantaged in these policy decisions were originally northern and western Europeans and, more recently, all-white populations. Although the volume offers a discussion of U.S. immigration policies from pre-colonial days, its analysis is richest in two late-

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twentieth-century policies: the implementation of the legalization provisions of the Immigration Reform and Control Act (IRCA) of 1986, and the expanded investment in border enforcement of the 1990s focused on the U.S.–Mexican border, known as Operation Gatekeeper. Hing's discussion of the implementation of the IRCA is particularly rich and will offer important lessons should the United States again pursue a large-scale legalization.

Defining America Through Immigration Policy makes a convincing and provocative argument that immigration policy has been used as a tool to reinforce notions of who is within the sphere of American identity. The volume, however, is troublingly incomplete in two areas. First, the exclusionary policies are often bundled into immigration reforms that offer opportunities for greater migration for other groups (the exception was the 1920s National Origin Quota laws). Yet, there is little discussion of these broader policies. So, although the reader of *Defining America Through Immigration Policy* would understand how the 1965 Immigration and Nationality Act amendments disadvantaged western hemisphere immigrants, s/he would have no sense of the broader effect of the bill to end the national origin quotas and to establish the foundation for steadily expanding immigration from Latin America and Asia for the next forty years (and beyond). Hing's core assertion about the exclusionary nature of immigration law could have been made more forcefully had the exclusions been analyzed in the context of the broader changes in immigration law and policy.

Second, Hing is unclear on the ideal type of the potentially "American" immigrant who is being advantaged through the exclusions. He identifies a Eurocentric model, but then doesn't analyze how southern and eastern Europeans moved from outside this norm in the 1920s to inside today. More importantly, today's immigration can hardly be characterized as reinforcing a white America, despite the many barriers that exist to Latin American and, particularly, Mexican migration. Over the past two decades, the U.S. immigration flow has overwhelmingly been made up of Asian and Latin American migrants and, because of family preference categories, these contemporary migrants have not been made up exclusively of wealthy migrants or those with professional skills. Mexican immigrants may well be the most excluded, but they are also the largest single group of migrants.

Defining America Through Immigration Policy offers a rich history of immigration law and policy that demonstrates that the United States is not a nation of immigrants. It is not, however, designed to stand alone as a text or resource on U.S. immigration policy.

LOUIS DESIPIO
The University of California, Irvine

Robert Ball and the Politics of Social Security *by Edward D. Berkowitz. Madison, University of Wisconsin Press, 2003. 432 pp. $45.00.*

In the preface to *Robert Ball*, Edward Berkowitz confesses that he shares his subject's views about Social Security: that this program embodies one of America's "greatest social policy achievements" (p. xvii). Although Ball, who

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worked for Social Security from 1939 until 1972, was in no position to claim objectivity, Berkowitz, who has written dozens of books and articles on the topic, is in an ideal position to do so. His latest work will disappoint those who are looking for yet another critique of the program, which, at its inception, scrupulously replicated the racial and gender biases of millions of Americans. Nor will the reader discover the "hidden welfare state" that political scientists have explicated in recent works. Rather, Berkowitz keeps his eye on the Ball, so to speak, and delivers a compelling, important, and insightful look at how a liberal program expanded in a conservative political environment.

Ball played a key role at every major turning point of the program, from the founding legislation in 1935 and the crucial amendments that reoriented the program in 1939, through Ronald Reagan's bipartisan commission, established in 1982. Notably, this last contribution came as a private citizen. Berkowitz examines these key policy-making moments in great detail. In crafting the key advisory report that led to the 1950 Social Security amendments, Ball laid the groundwork for solidifying the contributory "insurance" principle over the means-tested "welfare" approach to social provision. By yoking beneficiaries to the labor market, Ball and his liberal allies used conservative means to achieve liberal ends. Social Security benefits often redistributed "contributions" between classes and, as today's younger workers well know, between generations. Having secured a mechanism that was politically viable, Ball pressed relentlessly to expand the population that benefited from it. Disability, added in 1956, and Medicare, added in 1965, were Ball's two greatest achievements on this front. In 1972, Ball negotiated an agreement between Richard Nixon and a Democratic Congress that not only increased retirement benefits by 20 percent but also ensured permanent cost-of-living adjustments. When some of Social Security's more fiscally profligate promises came due, Ball worked with another Republican president—this time one who detested Social Security—to broker a compromise on Ronald Reagan's bipartisan commission.

Robert Ball should be read by social scientists and historians who are interested in post-World War II public policy making and the ways in which it evolved through the end of the Cold War. While Berkowitz delivers a treasure trove of detail, his greatest contribution is to illuminate the shifting basis of power inside the beltway. As Ball's service within the Social Security Administration demonstrates, power from the end of World War II through Ball's tenure as the program's chief administrator (1953 to 1972) resided *inside* the agency. It was Ball's ability to master the arcane policy language of Social Security while retaining his strategic vision that was the key to program expansion. By the mid-seventies, the policy-making environment had shifted dramatically. Social Security was now fair game for presidential intervention—even campaigning. Berkowitz illustrates the importance of Ball's subtle political skills as he tests the winds, realigns his points of access to power after leaving the Social Security Administration, and keeps on fighting for an expansive array of benefits tethered to a conservative fiscal base.

BRIAN BALOGH
University of Virginia

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Cities in the International Marketplace: The Political Economy of Urban Development in North America and Western Europe *by H.V. Savitch and Paul Kantor. Princeton, NJ, Princeton University Press, 2002. 480 pp. Cloth, $60.00; paper, $19.95.*

To start with the good news: H.V. Savitch and Paul Kantor's detailed account of ten cities includes some usual suspects from the globalization literature—London, New York, Toronto, and Detroit, but others less frequently included in international comparisons—Marseilles, Houston, Milan, Naples, Glasgow, and Liverpool. Although there is no pretense that these cities were selected as a representative sample of anything on the basis of some general hypothesis—they were apparently chosen for their diversity and the particular interests and contacts of the authors, not unusual selection criteria—there is an explicit effort to put them in a comparative framework, to line up characteristics next to each other and reveal similarities and differences. And a wealth of information is provided on each, although scattered through ten chapters organized by theme, rather than by city. The writing is clear and not jargon-laden, readable charts illustrate the text, and there are fifteen illustrations, some unusual.

Further on the positive, the underlying theme of the book is that human action and, specifically, political action, makes a difference, and that cities have choices and are not powerless in the face of overwhelming external forces. Not a new idea, but one worth reinforcing. And there are some new ideas briefly mentioned at the end that are worth exploring: that NAFTA might include urban provisions as the European Union does, that local benefits given to attract businesses should be taxed nationally, that national resources should be used to compensate for business relocations, and that growth should not be pursued for its own sake. The authors come through as perceptive, intelligent, socially concerned, and knowledgeable about what they write.

The bad news is on the level of theory. A full chapter is entitled "Towards a Theory of Urban Development," and scattered throughout the remaining chapters are generalized statements and charts that purport to explain what they describe, to make order out of the disparate findings about the ten cities. Unfortunately, what is presented is taxonomy masquerading as theory. There are typologies of market conditions, of policies of government vis-a-vis business (eight types for the ten cities), lists of driving variables and steering variables, different trajectories of change, models of diffuse and integrated forms of intergovernmental support, ranges of social-centered and market-centered strategies, favorable and unfavorable market contexts, and, every now and then, matrices that attempt to combine some of these, one going to three dimensions, creating, again, eight models for the ten cities.

But in the end, what is presented is simply description: this is how things are. Mayors win or lose elections, central governments lend or withdraw support, private investment comes or goes, different leaders adopt different policies. Nothing explains why these things happen, or how they are inter-related;

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what is presented is simply what has happened and when it has occurred at various times in the various cities under various circumstances. And there are not even enough cities to allow drawing conclusions as to correlation, much less causation. We end up with some generalities that are more or less commonsensical and that hardly justify the intense research that went into this volume:

> "Cities have choices, those choices vary with differential resources, and they are not without constraint" (p. 347).
>
> "Although we found evidence of policy convergence among our cities, their continuing diversity also stood out" (p. 348).
>
> "[In Europe] historic antagonism toward business appears to have dissipated. Ideological regimes have faded and new coalitions have softened their position against business collaboration. . . . This may explain the clustering in Figure 8.4 toward mercantile regimes . . ." (p. 305).
>
> "Some bargaining contexts supply abundant advantages to city governments, while others confer few. All told, driving forces line up in different configurations to shape bargaining" (p. 156).

But the book remains a useful storehouse of information for the authors, or perhaps others, to mine, perhaps for more trenchant conclusions.

PETER MARCUSE
Columbia University

Under the Eagle's Claw: Exceptionalism in Postwar U.S.-Greek Relations
by Jon V. Kofas. Westport, CT, Praeger Publishers, 2003. 360 pp. $64.95.

Outside intervention in Greece's affairs has been a dominant theme since the founding of the Greek state in the 1830s. The first Greek monarch, King Otto I, was chosen by the Great Powers and imposed on the Greeks over their objections. During much of the nineteenth century, political parties took their names from the powers with whom they were most closely associated—there was a "Russian Party," a "French Party," and a "British Party." On the part of the West, it was taken as a given that Greece could not exist without outside interference; meddling in Greek politics was regarded as just one more onerous dimension of the so-called white man's burden. As Sir Edmund Lyons, nineteenth-century British Minister to Greece, famously commented, "A Greece truly independent is an absurdity; Greece is Russian or she is English; and since she must not be Russian, it is necessary that she be English."

Followers of nineteenth-century European history will find such attitudes familiar from a host of global settings in which the powers of the West had economic and colonial interests. In the case of Greece, however, they live on to the present day, courtesy of the relentless U.S. interventionist policy that has shaped—indeed, warped—the country's development in the twentieth century.

Jon Kofas's book meticulously details the history of U.S. involvement in Greek politics since World War II, after which Greece became the testing

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ground *par excellence* for United States Cold War policy. During the course of the German occupation (1941–1944), two primary resistance movements came into existence, the first royalist and heavily backed by the British and the United States, the second leftist and (by the end of the occupation) supported by the Soviets. By the time the occupation ended, the two were, in effect, fighting a proxy war for the United States and the USSR; full-blown civil war swept Greece from 1946 to 1949. The Greek Civil War, one of the bloodiest in Europe's history, demolished the Greek social order and led to the outlawing of the left and the U.S.-backed military dictatorship of 1967–1974.

Although this big picture is well-known to those who are familiar with Greek history, Kofas's book adds an astonishing—and disturbing—number of details that collectively demonstrate the shocking extent to which Greece's own interests have never been at the forefront and instead have taken a back seat to those of the United States. The author does a superb job of demonstrating how Greece's most critical concerns—over Cyprus, for instance—have been entirely and consistently subjugated to the U.S. vision for the region. He also shows how Greece has attempted in different ways to cope with the fact of American "*hyperpuissance*" (p. 244), and shows how Greece can be seen as a model for the responses a number of smaller nations have had to the octopodan spread of American power.

In less-skilled hands, and with less-painstaking research, a book such as this one—interested in demonstrating one fundamental thesis, and an angry one at that—could easily sound a strident or repetitive note. Kofas does a superb job, however, of creating a clear, well-paced narrative, which relies on data rather than rhetoric to make its troubling point. A wide range of readers, academic and non-academic alike, will find it accessible and compelling fare.

KATHERINE E. FLEMING
New York University

Corporate Power and Social Policy in a Global Economy: British Welfare Under the Influence *by Kevin Farnsworth. Portland, OR, International Specialized Book Services, 2004. 232 pp. Cloth, $75.00; paper, $35.00.*

Kevin Farnsworth's highly readable book examines the role that business plays in the development of contemporary social policies. This is an important contribution to the literature because, as the author points out, most studies attribute the development of social welfare to a variety of factors, ranging from the power of labor to the "moral conscience of the middle classes and government" (p. 1). The role of business, however, has generally been neglected. Part of the reason for this omission is that business is assumed to be generally anti-welfare. Farnsworth also criticizes the proponents of the structural approach because they fail to accept that business power and influence are not static and that sometimes business is forced to mobilize for political action.

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Drawing on the work of David Vogel and others, Farnsworth proposes a model of business political behavior that acknowledges that corporate power varies over time. His model distinguishes between two sources of business power: agency and structure, each varying in relative importance over time and between policy areas. His case study is the role that business played in British social policy making between 1979 and 2000, an important period in British political history because it includes the entire period of neoliberal Conservative rule and the first term of the Labor government. Farnsworth's knowledgeable analysis provides the reader with an excellent overall view of a period that saw dramatic transformations in British economic and social welfare policies. In particular, he reviews the positions taken by British business on issues ranging from public housing to social security, heath care, and taxes, as well as its involvement in the management and provision of social services at the local level.

At first glance, Farnsworth's model of business power may not seem terribly innovative. To those of us who study business and politics in the United States, it has become conventional wisdom that the structural power of business is not absolute and that in many cases, especially concerning issues over which there is little agreement, firms have to mobilize and lobby to promote and protect their interests. In my view, one of the strongest contributions of Farnsworth's book is that he takes into consideration how the structural power of business has been enhanced by globalization. The age-old issue is, of course, capital mobility, which has been exacerbated by globalization and which provides business with a source of power unavailable to labor. The academic literature on the subject acknowledges the impact of globalization, but there is little mention of the manner in which international and supranational governmental organizations such as the EU and the World Trade Organization, which pressure governments to liberalize their markets and lower taxes and welfare benefits, are themselves subject to pressures from well-organized international business. Accordingly, even if there is no "hard" evidence that national governments are responding to the lobbying pressures of domestic business, its structural pressure continues to guide policy outcomes, inasmuch as everything is done in the name of increasing competitiveness and productivity. At the most general level, scholars interested in business, politics, and social policy will find this book informative and thought provoking. It is also an appropriate read for advanced undergraduate and graduate seminars.

SANDRA L. SUÁREZ
Temple University

Democratization Without Representation: The Politics of Small Industry in Mexico *by Kenneth C. Shadlen. University Park, Pennsylvania State University Press, 2004. 248 pp. $65.00.*

In recent years, students of democratization have pointed out that new Latin American democracies often perform poorly in representing interests and fa-

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cilitating inclusionary decision making. Analysts commonly focus on traditionally underprivileged groups, such as the indigenous or the poor more generally. In fact, business is often perceived as a privileged actor in Latin American politics and a beneficiary of neoliberal economic reforms. However, as Kenneth Shadlen points out, lumping all businesses together and assuming all have a privileged position is a serious mistake.

Instead, Shadlen demonstrates that small businesses have been relatively underprivileged in Mexican history, and their historically tenuous access to decision makers has collapsed in the more recent democratization process. This situation has left small business without a voice in policy making and without a meaningful place in any political party. In turn, this lack of voice has undermined the quality of development policies, with concomitant poor welfare consequences through job loss, business closings, and the disappearance of local capacity in important areas of supply.

Shadlen makes this case by tracing the origins of small business organization through formal, state sanctioned and subsidized participation in the official corporatist system of representation. Shadlen notes that the state is necessary if inherent limits to collective action among business, particularly small firms, is to be overcome. Compulsory membership provides resources to poor firms. Monopoly access to government gives small business representatives selective incentives with which to encourage participation.

Unfortunately, dependence on the state also created a profound dilemma for the official small business chamber (CANACINTRA). Accepting the state's support forced CANACINTRA representatives to follow an accomodationist policy toward the government, despite the fact that policy makers largely ignored them and government policy generally favored big business over small businesses. This dilemma spurred a revolt in the 1980s among small businesses that flowered in the context of Mexico's emergent democracy and that ultimately ended CANACINTRA's monopoly on representation. Ironically, that success eliminated any meaningful representation for small business.

Shadlen tells an important empirical story about small business in Mexico, but his contributions go beyond that. Shadlen's work reminds us of the need to differentiate among sectors of business and to recognize the diverse effects of neoliberal reforms within the business community. He drives home an important reminder that democratization may not improve equity or representation and may even worsen it. Shadlen's work also connects to the larger literature on "embedded autonomy" and the importance of business–state linkages in policy formulation. Finally, Shadlen points to the need to incorporate small business into the deepening of economic development in the "second generation" of neoliberal reforms. Perhaps Shadlen's most critical argument is that exclusion of small business participation undermines the overall aims of this second round of the deeper, institutional reforms that define the second generation.

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My most significant criticism is that Shadlen could have done more to develop these crucial contributions to understanding development and neoliberal reforms. Latin America has performed far less well than was hoped for over the past decade or so. The question of why remains open. Shadlen's argument that second-generation reforms are critical and depend on small business participation in decision making is an intriguing and provocative one. However, Shadlen tends to take the "embedded autonomy" argument about state–business cooperation for granted. I would be more persuaded, and I think the argument would be more valuable, if Shadlen had demonstrated this more concretely. This criticism aside, the book is a valuable contribution to debates about business, democracy, and development.

PETER KINGSTONE
University of Connecticut

Federalism and Democracy in Latin America *edited by Edward L. Gibson. Baltimore, MD, Johns Hopkins University Press, 2004. 336 pp. Cloth, $49.95; paper, $18.95.*

Federalism matters! The chapters in this volume challenge William Riker's argument that federal institutions are unimportant for policy outcomes. Through theoretical essays and case studies, they demonstrate that federal institutions affect policy making and democratic consolidation. Alfred Stepan challenges whether all federations follow the U.S. "coming together" model, showing that some follow a pattern of "holding together" or "putting together." These different origins make it necessary to consider how federalism relates to nationalism and democracy. Another theoretical innovation is the conceptualization of federations as falling on a "*demos*-constraining" to "*demos*-enabling" continuum. All federations are somewhat *demos*-constraining, but not equally so: the ability of national leaders to pursue policies supported by a national majority varies.

Several chapters focus on one determinant of *demos*-constraining federalism: malapportionment. Richard Snyder and David Samuels combine case studies of Argentina, Brazil, and Chile with regional statistics on malapportionment. The deliberate overrepresentation of rural, conservative areas—pursued by both democratic and authoritarian governments for political gain—pushes federal systems toward the *demos*-constraining side of the continuum. Edward Gibson, Ernesto Calvo, and Tulia Falleti show that in Argentina, malapportionment skewed the distribution of public funds toward poorer regions. Thus, structural adjustment policies hurt the capital city disproportionately. Alberto Diaz-Cayeros shows that malapportionment in Mexico also politicized the distribution of public funds, but not systematically against National Action Party governors. Although some funds, like health care, follow the legal criteria, others, like education, are distributed to favor powerful constituencies, like teachers'

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unions. Malapportionment may have historical roots when federalism is adopted to limit the power of a leading province, as Edward Gibson and Tulia Falleti show occurred in Argentina. Thus, they argue for considering the role of interprovincial conflict in explaining the origin of federalism.

Other chapters address how institutions within federal systems affect policy. David Samuels and Scott Mainwaring demonstrate how the fixed constitutional provisions of federalism interact with the effectiveness of presidential leadership, presidential support in Congress, and presidential performance, to affect the ability of presidents to implement economic reform. In Brazil, Fernando Henrique Cardoso was able to implement economic reform, but federalism made it costly for him to do so. Michael Penfold-Becerra offers a glimpse into the way the activation of federal institutions (i.e., the creation of direct gubernatorial elections) in Venezuela fragmented the party system and personalized the vote. The inability of the traditional parties to react to these phenomena, which began at the state level, led to the parties' collapse and the election of Hugo Chavez. Enrique Ochoa-Reza argues that because of reduced malapportionment and the existence of politywide parties, the reactivation of state-level institutions contributed to the transition to democracy and the construction of a *demos*-enabling federalism. In the last chapter, Alfred Stepan contends that robust federalism creates "electorally generated veto players." He points out that among the Organization for Economic Cooperation and Development countries, those with the most veto players (all of which are federal systems) tend to have the highest levels of inequality. This finding is troubling for Brazil and Argentina, which are both federal and already have high levels of inequality.

Although one might wish for an encompassing theoretical conclusion to extend to other cases the volume-specific conclusions in Gibson's introduction, each chapter makes a thought-provoking contribution to the study of federalism. All will stimulate debate about federalism in Latin America and show that federalism is not a moribund set of institutions, but interacts with other formal and informal institutions (including the party system) in important ways. Some will wish to test these arguments in other countries or regions. While not everyone will agree with all the arguments presented in this book, they will find it interesting and important reading.

MARIA ESCOBAR-LEMMON
Texas A&M University

The Information Revolution and Developing Countries *by Ernest J. Wilson III. Cambridge, MA, MIT Press, 2004. 456 pp. $49.95.*

Explaining the impact of the information revolution has become somewhat of a *cause célèbre* for scholars around the world. It is not an easy task to separate and understand the impact of global flows of information and the types

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of information they are conveying. Ernest J. Wilson's *The Information Revolution and Developing Countries* goes a long way toward explaining both information flows and the relationships between those who want to control them or receive benefits from them.

The theoretical tension in Wilson's research is one between the ability to generalize one's findings to other circumstances and the more culturally relative explanations that help us better understand the intricacies of how relationships work in specific places. Wilson suggests that past scholarship in the diffusion of information and communication technologies (ICTs) has been neither broad enough nor deep enough. "Too many [explanations] either had the details right but ignored the big picture or painted a big picture with inadequate supporting details" (p. xi).

To remedy this, he proposes a "strategic restructuring (SRS) framework," which encompasses a modified structuralist approach, incorporating economic, political, and social influences on ICTs. He really has two goals: to explain differences and similarities in the development and use of ICTs—first, within countries and second, between countries. In fact, Wilson has two books here.

After presenting a very complete discussion about the SRS model, he deftly takes us through the politics, economics, and culture of Brazil, Ghana, and China, describing the structures, institutions, political environment, and actual and proposed policies related to the diffusion of ICTs in each state. The beauty of this part of the book is that he has actually taken the time to do what needs to be done—travel to these parts of the world, interview and observe, and then combine these data with macro-level data from his own and other sources to paint the most complete picture possible.

The second goal is realized through an analysis of the global digital divide. This part is a little less successful. It is well written, researched, and supported; but when Wilson tries to apply the SRS model at this level, some of the concepts do not fit as well. Certainly structures, institutions, and political environment can be explained, but policy is very different at the global level. There are agreements, treaties, and even, he points out, regimes, but the nuances of the mechanisms of enforcement, for example, are not as clearly laid out.

It is evident that Wilson is an advocate of reform with the ultimate goal that access for all is desirable. Yet, his analysis does not bear out his desire for optimism. Chapter 6 describes the gaps between developed and developing countries by means of an index measuring the rate at which countries adopt and integrate ICTs. The problem, he points out, is that the reason the gaps are not closing is that the developed world is still progressing. Even at the most optimistic, East Asia, a region often seen as an achiever, "would pull even with the developed nations only by the year 2055" (p. 320).

Wilson finds (unsurprisingly) that the private sector "came to the digital divide issue driven mainly by commercial concerns" (p. 384) and, consequently, philanthropic concerns were secondary. But he does not follow up on the implications of such an attitude. A global, vocal minority regularly complains

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that accepting these commercial interventions is not simply receiving the technology, but also translates into accepting a different culture as well.

The crux of his argument: should ICT development simply be technology diffusion for its own sake or should it be "appropriate" development? Despite Wilson's discoveries of similarities in paths and trajectories, the question remains, "How much development needs to be specific to the culture and society of the countries themselves in order to get the best use out of the technology?" The SRS framework provides robust and substantive guidelines for understanding the answers to these questions, providing a valuable, replicable model for others to use. And Wilson does an excellent job of helping us think more theoretically and conceptually about the impact of the information revolution.

KENNETH ROGERSON
Duke University

The Birth of the Palestinian Refugee Problem Revisited *by Benny Morris. New York, Cambridge, Cambridge University Press, 2004. 644 pp. Cloth, $110.00; paper, $40.00.*

The Birth of the Palestinian Refugee Problem—originally published in 1987—marked the beginning of a new school of historical research in Israel regarding the war of 1948. Benny Morris, its author, was the first of a number of "new historians" whose work on the origins of the Israeli–Palestinian conflict and the founding of the state of Israel conflicted with the line of the Israeli government and the historical establishment since the creation of the state. The book was a first step in the process of recognizing Israeli responsibility—more clearly established by subsequent historians—for the Palestinian exodus of 1948. Basing his findings on what was then newly declassified materials in the Israeli archives, Morris illustrated how Zionist and, later on, Israeli, forces expelled entire Palestinian communities from towns and villages. The move, undertaken with the tacit approval of their leadership, was aimed at the cleansing of the territories set to become Israeli under the UN partition plan of 1947.

The revised edition of the book contains a longer introduction, a slightly modified section by way of historical background (chapter 1) and a new chapter on the idea of "transfer" (i.e., the expulsion of the Arab population from Palestine) in Zionist thought before 1948 (chapter 2). The conclusion has also been revised—and made longer—and some of the language has also been changed throughout all chapters. All in all, the revisions appear more cosmetic than substantial in nature. No new groundbreaking evidence is included to support or refute earlier conclusions. Even with a new chapter devoted to the topic of "transfer," Morris's original position has not changed: direct expulsions carried out by Israeli troops, together with a number of other events, were at the heart of the exodus of the Palestinian population. However, such expulsions did not represent premeditated Zionist strategy but resulted from different

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circumstances on the ground. The new chapter offers a detailed and compelling record of the existence and development of the idea of expulsion within the ranks of the Zionist leadership in Palestine since the 1930s. And yet, the author goes to a lot of trouble to argue that evidence of the idea of "transfer" in the ranks of the Zionist leadership was not "tantamount to preplanning" (p. 60). In fact, this theme seems to be rather belabored, inasmuch as it appears in almost every chapter, particularly following his narrative of actual expulsions.

Consider his account of the mass exodus of Palestinians from Lydda (chapter 7). In answer to the question of what to do with the town's population, then-Prime Minister David Ben Gurion replied: "Expel them all" (p. 429). The exact text of the expulsion orders issued by Yitzhak Rabin, then chief of the Palmah, is also cited: "All inhabitants of Lydda must be expelled quickly without attention to age" (p. 429). And yet, despite a detailed account of the expulsion operation that follows, Morris downplays the act of expulsion by claiming that the displacement of the Palestinian population was the result not just of expulsion but of a combination of factors (e.g., the "feeling [by the town's people] that Lydda's 'turn' was imminent," "the attack, with bombing and shelling," the "Arab Legion pullout") (p. 599).

Despite the author's extensive use of archival materials, the book remains lacking in the use of works by Palestinian historians (whose works are dismissed as the Arab equivalent of the old Israeli historians, whom he considered "chroniclers" and "not really historians") (pp. 5–6.). Also absent are testimonials from Palestinians and Arabs who lived the events. Although the Arab state archives regarding 1948 are, no doubt inaccessible, other materials are available, such as memoirs, biographies, and autobiographies by Abdulla al-Tal, Anwar Nusseibeh, and Emile al-Ghouri, to mention a few, as well as newspapers of the time.

The revised version of the book does not offer much additional evidence except, perhaps, for accounts of a number of expulsions that did not appear in the first version. Morris's ambivalence toward Israel's historical responsibility is still present. Still, the book remains a seminal work on the evacuation of Palestinians between 1947 and 1949. This extremely readable book narrates a powerful story of the uprooting of a people, even if the very voice of the uprooted is absent from it.

ISSAM NASSAR
Bradley University

The Unthinkable Revolution in Iran *by Charles Kurzman. Cambridge, MA, Harvard University Press, 2004. 304 pp. $27.95.*

On the surface, the comparative study of revolutions reveals recurring features; similar patterns can be discerned in the disillusioned talk of those who felt bliss at the dawn of a revolution and betrayal before the nightfall, or in the narrative of salvation constructed by the winners at the end, when the dust had finally settled. Judging by both the range of quotations in the book and the extensive footnotes, Charles Kurzman has been an avid listener. But there

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is more to this book than a critique of discordant voices explaining how it came to pass that so many millions abandoned decades of tacit obedience to a regime whose downfall could plausibly have been scripted a few years earlier solely in terms of a burst of bullets and an overnight military putsch. As a sociologist, Kurzman is also a perceptive reader of theoretical works on revolutions and a contributor to contemporary debates. He has listened carefully to many conversations in order "to examine the mindset of the moment" (p. 11), and has studied the burgeoning documentation on the Iranian Revolution. The outcome is not the discovery of a catchall theory to explain this revolution and serve as a dowsing rod for the next. It is, on the contrary, a convincing refutation of retroactive prediction as the main business of the social sciences.

The dismantling is done while scrutinizing frequently offered accounts of why the Iranian Revolution happened when it did. These explanations—political (1977), organizational (early 1978), cultural (mid-1978), economic (fall 1978), and military (1978–1979)—take up five of the eight chapters of the book; and as the dates within the parentheses indicate, they are presented in a diachronic sequence, which provides a chronological scaffolding for this account of the Revolution. Each explanation is examined in detail and its shortcomings noted (there is a convenient summary on p. 6). The alternative, or the solution, is not, the author points out, to be found in a holistic approach to explanations, as if all these could be regarded as complementary ingredients needed to trigger the final explosion. What he offers instead is an "anti-explanation," which "means abandoning the project of retroactive prediction in favor of recognizing and reconstructing the lived experience of the moment. For moments of revolution, this experience is dominated by confusion. . . . The goal of anti-explanation is to understand the variety of responses to confusion" (p. 166), an approach reminiscent of writings in other fields by such diverse thinkers as Mikhail Bakhtin and Stuart Hampshire. It is thus a plea for abandoning the parlor game of "what if" in favor of "the challenging endeavor to sift through the evidence and try to understand what was going through people's minds in a particular place, in a particular context, in dramatic historic times" (p. 11). It is to abandon the *why* for the *how*: how it came about that a large majority of people began to think the unthinkable.

In spite of this rapprochement between social history and sociology, implicit in the fusion of social themes and revolutionary seasons, the book remains essentially a sociological discourse and adheres to the goals set out at the beginning. The guerilla movements get only a passing reference (p. 146); the part played by the BBC (the bugbear of the monarchists) in the propagation of revolutionary news, the role of the Iranian students abroad in the years preceding the Revolution, all are ignored. As the author himself points out, "A close history of the Iranian Revolution has yet to be written" (p. 175). Perhaps a full interdisciplinary conversion will see the author undertake this urgent task himself.

MOHSEN ASHTIANY
Columbia University

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The River Runs Black: The Environmental Challenge to China's Future *by Elizabeth C. Economy. Ithaca, NY, Cornell University Press, 2004. 272 pp. Cloth, $29.95; paper, $17.95.*

In the past decade, increasing numbers of books and journal articles have been published that examined the environmental challenge China faced in the midst of its rapid economic development. Some of these works documented the trends as well as the socioeconomic causes of environmental degradation in different parts of the country; others reported case studies of the institutional problems local government agencies face in controlling various forms of pollution. Elizabeth Economy's book is unique in that it is the only full-length book that attempts to provide a comprehensive overview of the key cultural, socioeconomic, and political roots of the environmental challenge in China. The book is highly readable, inasmuch as it not only provides a broad overview of the key issues, but also provides numerous examples and illustrations, many of which are based on the author's own interviews with key actors in the environmental field in China.

The book starts with a case analysis of the economic and political causes of the failed effort by the Chinese government to clean up the Huai River. Then it analyzes how a cultural legacy of emphasizing exploitation of nature by man has contributed to contemporary difficulties in environmental protection. After examining how the economic forces behind the rapid economic growth in the reform era have imposed enormous environmental costs on China, it proceeds to examine how the current political and legal institutions have constrained the ability and willingness of government officials, especially those at the local level, to tackle environmental problems. These four chapters, the first half of the book, provide many new examples and cases, but the arguments themselves should be quite familiar to those who have been following the current literature.

In the context of the existing literature, the key contribution of the book appears in chapters 5 and 6. Chapter 5, "The New Politics of the Environment," examines the emergence of environmental nongovernmental organizations (NGOs) in China, how these NGOs have played a role in promoting various environmental conservation causes, and how some of them have undertaken active policy advocacy and raised aspirations for democratic governance. The chapter provides many more detailed examples of environmental NGO activities than are available in the existing literature. Chapter 6, "The Devil at the Doorstep," examines how China's environmental efforts have been affected by its increasing engagement with the international community through trade, participation in international forums, and being a recipient of funding from international organizations and foundations. It shows that in many respects, the international community has had a positive influence by promoting cooperative ventures with different sectors and levels of government in China, but the effectiveness of these ventures has often been hampered by a lack of enforce-

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ment capacity and incentives among domestic government entities. This chapter is the best and most comprehensive overview of the subject of which I am aware in the existing literature.

Chapter 7, "Lessons from Abroad," compares Chinese experiences with those of other Asian and eastern European countries. Although the overview of these non-Chinese experiences is rather broad, the chapter raises an interesting question, i.e., to what extent may further development of environmental NGOs trigger larger social movements that could lead to fundamental political changes. Chapter 8, the concluding chapter, follows up on this theme by outlining three possible scenarios for the future.

Overall, the book is a welcome addition to the growing literature on environmental governance in China, reflecting many years of fieldwork and careful observation by a dedicated scholar. The book is especially valuable because it raises issues about how China's response to its environmental challenge may affect its overall political development.

SHUI-YAN TANG
University of Southern California

Bare Branches: The Security Implications of Asia's Surplus Male Population *by Valerie M. Hudson and Andrea M. den Boer. Cambridge, MA, MIT Press, 2004. 400 pp. $35.00.*

Population dynamics have a way of catching people unaware, and sometimes producing havoc. The worldwide baby boomers, born between 1945 and 1965, began coming of age in the late 1960s and produced an equally worldwide epidemic of violence. From the anti-Vietnam War movements to the Chinese Cultural Revolution, it was the great surge of young people taking to the streets who produced the violence. More recently, population aging has caught the attention of demographers and policy makers, who are struggling to understand the implications.

One issue has escaped attention, however, and may well pose a far more serious risk to worldwide stability, and for far longer. This is the rising number of men without women, especially in east and south Asia. It is to these that Valerie M. Hudson and Andrea M. den Boer turn their attention in this exhaustively researched and important volume.

Boys and men have always and everywhere been more valued than girls and women. This is especially the case under conditions of scarcity and insecurity. Sex ratios at birth under "normal" conditions are typically 105–106 boy babies for every 100 girl babies. But many societies distort this ratio through female infanticide or, more recently, abortion of female fetuses. The result is an "exaggerated sex ratio," which can easily reach 120 boys to 100 girls. This produces a surplus of males, most of whom will not be able to marry and raise families. These are the "bare branches" to which the title refers.

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The authors show with extensive documentation that their numbers are large and growing. In south and east Asia (China, South Korea, Taiwan, Bangladesh, India, and Pakistan), the total female deficit or male surplus may be as high as 90 million (p. 62). East and south Asia are particularly important, inasmuch as this is where the undervaluing of females is most extreme and this is also an area that accounts for nearly half of the world's population.

But there is more. Males are more violent than females, in part because of higher levels of testosterone. Men without women are far more violent than are men with women. Testosterone levels drop significantly and quickly when men marry.

The bare branches are most likely to be the less-educated, less-skilled, transient populations, in whom are seen reduced ability to marry and extreme marginalization. This social and physical isolation implies weak social control networks, which amplifies the violence in the bachelor groups.

The authors use historical cases to show high instability in countries with "exaggerated sex ratios." Typically, high-sex-ratio countries have authoritarian governments. The spread of democracy owes much to women and the balance of sex ratios.

China has recognized the problem it has and is now attempting to raise the value of girls and women. India has yet to recognize the problem. The authors note that solving the problem by correcting the sex ratio will take decades at best, and may be impossible in most societies. A most likely outcome will be increased instability and violence against other countries, against internal ethnic minorities (seen now especially in India), and possibly against the government itself.

Two conditions the authors do not emphasize make their prognosis of rising violence more fearsome. The current demographic transition is producing very large numbers of these young males; and more and more of these are concentrated in urban areas. They have already shown they can be rich cannon fodder for demagogues. The future does not look bright.

The authors are to be commended for the acute perception that brings this insight and for the exhaustive research that makes the case.

GAYL D. NESS
University of Michigan

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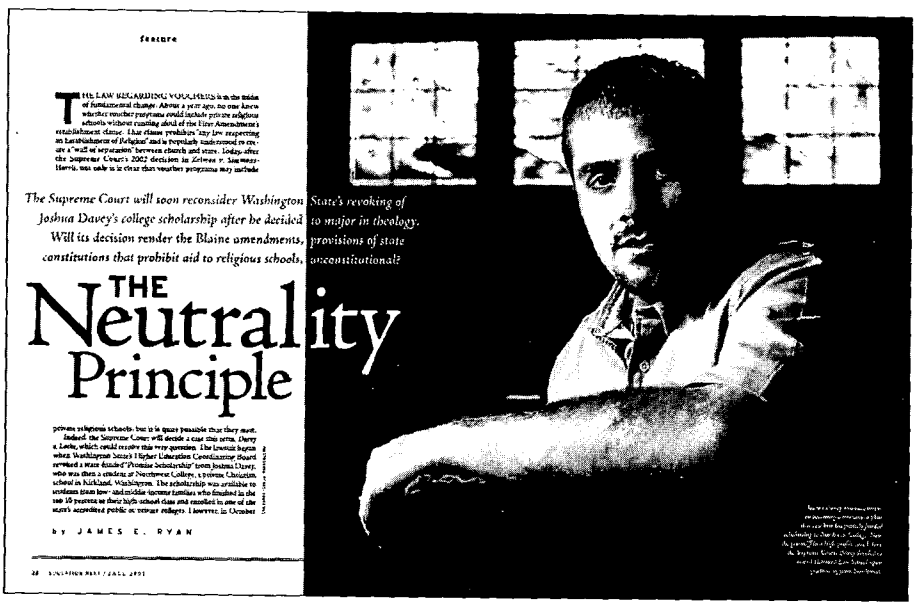
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THE LAW REGARDING VOUCHERS is in the midst of fundamental change. Above a year ago, no one knew whether voucher programs could include private religious schools without running afoul of the First Amendment's establishment clause. That clause prohibits "any law respecting an establishment of religion" and is popularly understood to create a "wall of separation" between church and state. Today, after the Supreme Court's 2002 decision in *Zelman v. Simmons-Harris*, we know it is clear that voucher programs may include

The Supreme Court will soon reconsider Washington State's revoking of Joshua Davey's college scholarship after he decided to major in theology. Will its decision render the Blaine amendments, provisions of state constitutions that prohibit aid to religious schools, unconstitutional?

THE Neutrality Principle

BY JAMES E. RYAN

private religious schools, but it is quite possible that they must. Indeed, the Supreme Court will decide a case this term, *Davey v. Locke*, which could resolve this very question. The lawsuit began when Washington State's Higher Education Coordinating Board revoked a state-funded "Promise Scholarship" from Joshua Davey, who was then a student at Northwest College, a private Christian school in Kirkland, Washington. The scholarship was available to students from low- and middle-income families who finished in the top 10 percent of their high school class and enrolled in one of the state's accredited public or private colleges. However, in October

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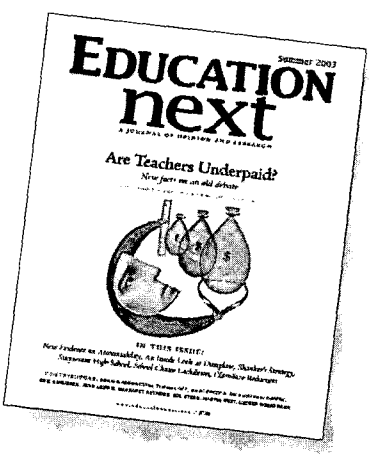

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Correspondence

To the Editor:

In "Palestinian Suicide Bombing: Public Support, Market Share, and Outbidding" (Spring 2004 issue), Mia M. Bloom tries to explain the variation in the number of suicide attacks over time, claiming that suicide attacks "are . . . closely related to periods when Arafat is weaker and rival organizations compete to fill the power vacuum" (p. 79). Unfortunately, the data and subsequent analysis do not support either this hypothesis or additional claims made in the article.

Intriguingly, the author failed to present any measure for the political strength of Arafat—the independent variable. Moreover, according to the hypothesis put forward, we should expect changes in the number of suicide attacks in accordance with the political fortunes of Arafat. Yet, according to Figure 5 (p. 80), there is little variation in the number of successful suicide operations and the author makes no attempt to link the limited fluctuation in the number of suicide attacks to Arafat's presumed weakness.

The author's assertion that the Palestinian Authority (PA), led by Arafat, was weak (because he did not secure enough concessions from Israel) and, therefore, could not disarm the Hamas militia is problematic. The wave of Hamas suicide attacks in February and March 1996 occurred immediately after the transfer of the Palestinian cities to the PA (January 1996), when the hopes for further Israeli territorial concessions were at their height. Moreover, Arafat controlled over 40,000 men in arms, more than enough to vanquish a few hundred Hamas militias. From the very beginning of the Oslo process, Arafat preferred to tolerate an armed Hamas perpetrating terrorist attacks against Israel to the use of force against fellow Palestinians.

The author also fails to provide proof for a causal relationship between lack of progress in the peace process (usually a euphemism for Israeli concessions) and increase in terrorist activities. Actually, the Palestinian campaign of terror started in September 2000, after Arafat was offered unprecedented Israeli concessions.

The author ignores the fact that terrorists' successes are primarily the result of the balance between their capacities and the efficacy of the counterterror measures. Indeed, the Gaza Strip, better cordoned by the Israeli military than the West Bank, produced a minimal number of suicide attacks, despite the fact that the Islamist radicals have consistently had more support in Gaza at the expense of Arafat. The organizational variable is also most appropriate in explaining the variation in the number of attacks from various parts of the West Bank. The Israeli security barrier has clearly diverted the geographical focus of terrorist attacks. Indeed, there has been a clear, continuous decline in the number of terrorist attacks and Israeli casualties since August 2002. During this time, no political overtures were made to the Palestinians and Arafat's status among the Palestinians did not improve. This in itself refutes the author's

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main argument that increase in terror is strongly related to the subjective state of despair of the Palestinians and to Arafat's oscillating political standing.

The claim that Palestinian violence "resonates with the larger population because of . . . the Sharon government's . . . tactics" (p. 69) is not supported by the data supplied, which show that support for suicide bombings is *not* connected to which government rules Israel and to the type of Israeli reactions. According to Figure 1 (p. 68), support for suicide operations was rather constant before Sharon came to power and afterwards.

The author misreads Israeli politics by portraying the Likud-led governments elected after the Oslo Agreements as pursuing "the maximalist goals of 'Greater Israel'" (p. 86). In 1996, Netanyahu's election platform included acceptance of the Oslo Agreements, and he signed the January 1997 Hebron and the October 1998 Wye Plantation accords, making additional territorial concessions to the PA. Sharon enunciated his commitment to painful territorial concessions in the 2000 and 2002 electoral campaigns, and announced in June 2004 his intention to unilaterally withdraw from Gaza.

The author also misquotes Yitzhak Rabin (p. 87). This speech does not refer at all to a Gaza withdrawal. A worse mistake is portraying Rabin as determined to continue with the Oslo process in disregard of the terror emanating from the PA territory. Actually, in the very same speech, Rabin warned that "continuous terror of Hamas, with the PLO's acquiescence, will prevent reaching an agreement and its implementation."[1] People well acquainted with him speculated that Rabin would have stopped the process and would have initiated harsh military measures in response to more evidence that the PA turned a blind eye to Hamas terror.

EFRAIM INBAR
Bar-Ilan University

The Author Replies:

Efraim Inbar raises certain questions about my article that should be addressed; the overall problem, however, with Dr. Inbar's comments is a fundamental misreading of my main points. My work on Palestinian suicide bombing, submitted to *PSQ* originally in the late fall of 2002, was intended to demonstrate how multiple terrorist organizations were competing for market share among a larger Palestinian public. The article argues that when public opinion supports the use of violence, organizations will tactically shift their strategies in order to engage in suicide terror and mobilize support in their favor. The key point is that when multiple organizations compete for popularity or external funding, the nature of the violence will increase both in scope and intensity. In fact, the article argues that support for Arafat did not significantly change within his base but that support among nonaligned voters, those who previously argued that they did not trust any of the above actors, did shift in favor of Hamas

[1] *Pursuing Peace. The Peace Speeches of Prime Minister Yitzhak Rabin* (Hebrew) (Tel Aviv: Zmora-Bitan, 1995), 107.

A note from the Editor: This correspondence was submitted before the death of Yassir Arafat 11 November 2004.

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and other militant organizations. Thus, the article argued that under certain conditions, suicide terror was a way of mobilizing support. Finally, organizations that had previously eschewed this tactic likewise jumped on the bandwagon as more and more groups began to engage in suicide terrorism, even extending the franchise to women.

The almost daily attacks in the months after Prime Minister Sharon visited the Temple Mount, deliberately baiting militant groups to strike, constitute a wave. Only then did public support for martyrdom operations increase to as high as 80 percent at times. The fact that Inbar argues against this obvious point betrays a lack of objectivity. No scholar of Palestinian public opinion disputes the role played by this provocation or the death a few days later of Mohammed Durrah—no matter who was ultimately responsible for Durrah's death. Inbar further argues that Israeli counterterror policies are effective; I argue precisely the reverse in the article. What appears to be a good short-term strategy using strong-arm tactics ultimately inculcates a greater sense of outrage and, in the long term, produces many more suicide bombers and militants. The interviews conducted by Nichole Argo with bombers deterred in Israeli jails prove this point beyond a shadow of a doubt. Inbar fails to see that the core of counterterrorism should not be focused exclusively on the terrorists' capacity to carry out attacks but should also address the underlying motivations for violence. Fences, walls, checkpoints, daily humiliation, and occupation are recipes for disaster, regardless of the region.

As for portraying Netanyahu as a real supporter of the Oslo Accords, again, this is not a serious statement. The deliberate delays in implementation were among several factors that contributed to the failure of the process and undermined the PA's ability to sell any deal years later. Far from blaming one side exclusively, the article takes the PA's corruption to task and allocates blame for this failure across the political spectrum. Had Arafat been a statesman, he might have been able to salvage the process by the time Barak made additional concessions, but, by this point, support for peace had been irrevocably affected.

Finally, the quote from Rabin was, as it is listed in the footnotes, excerpted from Robert Pape's seminal APSR article. To be sure, I went back to the archives and found that Pape, and by extension I too, had not misquoted Rabin or taken him out of context and I encourage the author to read for himself the full text of the speech, which can be located at: Israel Ministry of Foreign Affairs, "PM Rabin's Speech to the Opening of the Knesset, 18 April 1994."

MIA BLOOM
Princeton University

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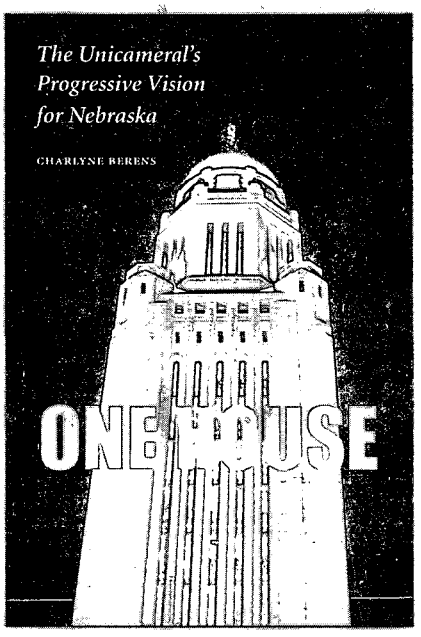
University of Nebraska Lincoln



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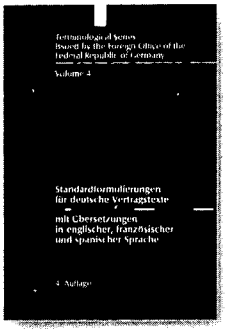

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PREVENTIVE WAR, IRAQ, AND IMPOSING DEMOCRACY

Edited by
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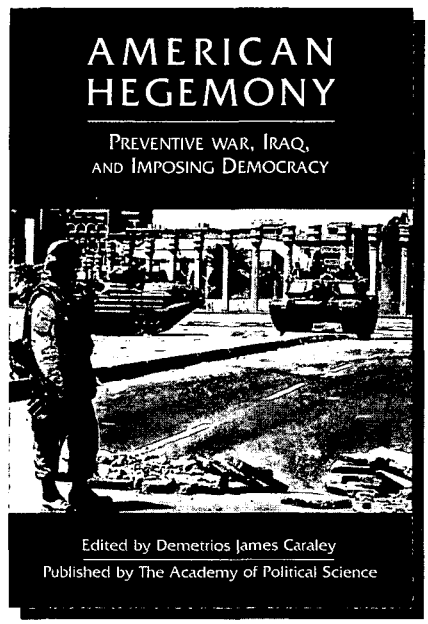

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